

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 23,008

658

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

IN RE:
ESTATE OF ERNEST C. LEE,
deceased

MARION LEE BUCHANAN,
JOHN W. LEE, III,
DONALD H. LEE,
RUBY M. LEE, LEGAL GUARDIAN FOR
NANCY G. LEE, Minor,
Appellants,

v.
VIRGINIA MAE LEE,
Appellee.

On Appeal From
The United States District Court

**BRIEF FOR APPELLANTS
AND APPENDIX**

United States Court of Appeals
for the District of Columbia Circuit

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STATEMENT OF ISSUES PRESENTED¹

When ample funds are available to pay all administration costs and taxes, there being no debts, is the fiduciary chargeable for loss in value of bank stock or must legatees bear the loss?

¹ This case has not previously been before this Court.

When bank stock decreased in value from \$152,076.00 to \$91,641.00 during probate, is the commission of a fiduciary based upon value at time of death or inventory or upon decreased value at time of distribution?

When there is a loss in value of \$43,905.00 in bank stock, is the fiduciary to be charged with interest on loss in value of bank stock, and failure to keep excess funds productive?

Are surplus funds from the sale of real estate, after payment of costs of administration and legacies required to be immediately distributed among the heirs?

REFERENCES TO RULINGS

Order of Judge Gasch dated March 4, 1969, denying Motion to Surcharge Virginia Mae Lee, Administratrix, c.t.a., For Loss in Value of National Bank of Washington Stock and Loss of Interest

and

Exceptions to Second and Final Account

Appendix (A. 119)

Order of March 13, 1969, approving Restated Second and Final Account

Appendix (A. 109)

STATEMENT OF THE CASE

This is an appeal from probate proceedings in the United States District Court for the District of Columbia in re the estate of Ernest C. Lee, deceased, and arises from denial of motion to surcharge the administratrix, c.t.a. and overruling exceptions to the second and final account, and approval of restated second and final account, prior to expiration of time to appeal order of court denying motion to surcharge and overruling exceptions to second and final account.

Ernest C. Lee, died testate, March 27, 1966, survived by Mrs. Marion Lee Buchanan, adult daughter, and the following grandchildren, John W. Lee, III, adult, Donald H. Lee and Nancy G. Lee, minor children of a predeceased son, John W. Lee, II, (who died June 24, 1958) by his first marriage, appellants,² hereinafter referred to as movants or exceptants whose combined interest in the estate constitutes two-thirds thereof. Ernest C. Lee remarried late in life, and was also survived by his second wife, Virginia Mae Lee, appellee, the administratrix, c.t.a, hereinafter referred to as the administratrix, omitting c.t.a., whose interest in the estate is the remaining one-third.

The Lee family has been in the funeral home business in the District of Columbia for over 100 years, incidentally prior to 1932 the Lee Funeral Home was located just across Pennsylvania Avenue from this courthouse. The founder, John W. Lee and his son Ernest C. Lee, decedent, John W. Lee, II, deceased son of Ernest C. Lee were licensed morticians. A. Kent Buchanan, husband

² Ernest C. Lee was also survived by four other grandchildren, children of his daughter, Mrs. Marion Lee Buchanan.

of Marion Lee Buchanan, is a licensed mortician. The oldest son of Mr. and Mrs. Buchanan, and John W. Lee, III, the oldest son of John W. Lee, II (deceased), are educated and trained to be licensed morticians.

John W. Lee, II, the deceased son of the testator, spent all of his adult life in the Lee Funeral Home business; consequently, it was his only source of income. On his death his father, Ernest C. Lee, testator agreed to continue to furnish funds to his son's widow, Ruby M. Lee, as her late husband's share of the business, provided she would not secure employment to support herself and her children, but would remain at home and rear his minor grandchildren. This was done, and at the time of the death of Ernest C. Lee, testator, the oldest grandchild, John W. Lee, III, was an adult; the other two, Donald H. Lee and Nancy G. Lee, were still minors. Upon the death of Ernest C. Lee, the predeceased son's widow and family's only source of income stopped.

Ernest C. Lee's will, dated June 30, 1965, was filed April 6, 1966 (A. 1). The nominated executor predeceased the testator, and the nominated successor executor's renunciation was filed July 19, 1966. Letters of administration c.t.a. were granted Virginia Mae Lee, the second wife, who qualified on October 20, 1966. On November 22 she filed renunciation of devises and bequests made to her in her husband's will, electing to take in lieu thereof her legal share of the real and personal estate of her deceased husband (A. 12).

The assets of the decedent, Ernest C. Lee, as per inventory of money and debts due deceased filed December 12, 1966, totaled \$105,631.12; included in this amount was \$94,064.66 as decedent's 1/2 interest in J. William Lee's Son's Company (the Lee Funeral Home). (A. 12). Copy of an appraisal received by appellants in March, 1967, of twenty-six parcels of real estate owned by Ernest C. Lee and others as of March 27, 1966, totaled One Million, Seventy-Two Thousand and Five Hundred (\$1,072,500.00) Dollars of which Ernest C. Lee (decedent) held an undivided one-half interest or Five Hundred Thirty-Six Thousand Two Hundred Fifty (\$536,250.00) Dollars. Inventory of appraised personal estate filed April 3, 1967, totaled \$155,030.13;

included in this figure were 1,653 and 3/4 shares capital stock, National Bank of Washington (hereinafter referred to as Bank stock), appraised at .92 or \$152,076.00.

On Friday, April 7, 1967, the administratrix secured an Order of the Court to sell, among other items of appraised personalty, the 1,653 shares of Bank stock; which Order was vacated by Order of Court on Monday, April 10, 1967, on motion of movants.

Movants, unable to secure an accounting and needing information and data, that could be obtained only through the administratrix, to secure financing to purchase assets or advance funds to pay debts, legacies and administration costs to expedite closing of the estate, on May 5, 1967, filed opposition to petition to sell appraised personalty (A. 22) and moved to set bond to cover debts legacies and administration expenses or, in the alternative, motion to require administratrix to furnish information to enable movants to arrange financing to preserve assets. On May 15, 1967, administratrix filed re-stated inventory of money and debts due to deceased, which changed the original 1/2 or 50% interest in the funeral home from \$94,064.66 to \$365,740.94, the re-stated total shown thereon to be \$377,322.90.

On May 26, 1967, administratrix filed petition to sell funeral home (A. 28), and on same day Ruby M. Lee, Mother, Custodian and Legal Guardian of Donald H. Lee and Nancy G. Lee, filed petition for advancement of funds for support of minors. (A. 31). Administratrix answered appellants opposition to sell appraised personalty, and motion to set bond to cover debts, legacies and administration costs or, in the alternative, motion to require administratrix to furnish information to enable movants to arrange financing (A. 25), and also answered Ruby M. Lee's petition for advancement of funds to support minors. (A. 39). Hearing was held on both motions on June 14, 1967. The securing of financing amounting to several hundred thousand dollars necessitated the furnishing of a great amount of detailed information which appellants did not have and, likewise, consumed much time; upon these representations to the court by movants, the matter was continued by the court

until July 14, 1967, to enable movants to secure prior year tax returns and pursue their efforts to secure financing to purchase assets, or advance funds to pay debts, legacies and administration costs.

Jack Pinkston, a Maryland attorney not being admitted to practice in this jurisdiction, engaged Lyle L. Robertson (present counsel), as local counsel. Jack Pinkston, who had handled this matter, expired June 23, 1967, while in Memphis, Tennessee. Thereupon, present counsel was engaged by movants to represent their interests.

At hearing on July 14, 1967, which was on motions continued from June 14, 1967, counsel for movants requested a continuance for the reason that due to the death of Jack Pinkston, the time elapsing before he could secure the files due to funeral arrangements, and the 4th of July holiday, he was not prepared to properly present movant's position. All motions were continued by the court until August 17, 1967; and the court directed that the petition to sell the funeral home would also be heard at that time.

Movants filed suit for partition of sale of the 26 parcels of real estate in which the decedent owned a one-half interest (Civil Action Nos. 1702-67 and 1703-67) in one of their attempts to secure funds to purchase assets. Movants filed opposition to sale of funeral home and motion for specific performance to convey widow's interest in funeral home (A. 35). At hearing on August 17, 1967, a guardian *ad litem* was appointed to represent minors, and hearing on motions was continued until August 31, 1967.

At hearing on August 31, 1967, order was issued for the sale of the funeral home for \$455,916.67, and a separate order for sale of some treasury bonds and 100 shares of stock of Technical Service, Inc. was also issued. Movant's, as a result of the court order for sale of funeral home, withdrew motions for advancement of funds to minors, to set bond to cover debts,

legacies and administration costs or, in the alternative, motion to require administratrix to furnish information to enable movants to arrange financing (A. 58). Movants were unable to arrange financing by the time for appeal of the August 31 order expired.

From the sale of the funeral home, which was consummated on or about September 13, 1967, \$455,916.67 was realized. Inheritance Taxes, Federal and District of Columbia, were paid on or about October 24, 1967, in the amount of \$156,096.96; \$155,000.00 was distributed on or about October 20, 1967 (movants' share was \$100,000.00). After payment of taxes and partial distribution, \$144,819.71 cash was held, plus the 1,653 and 3/4 shares of Bank stock, carried on the Federal Inheritance Return at value of \$136,434.38, or approximately 82 per share. On October 24, 1967, the administratrix, through her attorney, transmitted to counsel for movants copies of Inheritance Tax Returns for retention. In his letter of transmittal he stated: "The first annual account is being prepared at this time, a copy of which will be furnished to you upon filing. Upon its approval, it is my intention to petition the Court to distribute the National Bank of Washington stock in kind as no useful purpose is being served by these certificates remaining in my safe." (A. 59).

Exceptions were filed to the second and final account, and motion to surcharge for loss in value of Bank stock and loss of interest with points and authorities. (A. 86). Administratrix filed opposition thereto (A. 97) and, thereafter, filed re-stated second and final account. (A. 106). Exceptants then filed supplement to motion to surcharge for loss in value of Bank stock and loss of interest and exception to re-stated second and final account (A. 111). Administratrix then filed revised distribution scheduled. At hearing on the motion to surcharge and the exceptions to the second and final account the Court took the matter under advisement and, on March 4, 1969, issued an order denying the motion to surcharge and overruling the exceptions to the second and final account which, in so doing, movants and exceptants contends was error. By separate order signed March 4, 1969, consented to by

counsel for movants and exceptants, the Court authorized the distribution of the Bank stock. In approving the re-stated second and final account on March 13, 1969, prior to the expiration of the time to appeal from the order of March 4, 1969, denying motion to surcharge and overruling exceptions to the second and final account, movants and exceptants contend further error was committed.

ARGUMENT

I. LOSS IN VALUE OF BANK STOCK

The 1,653 shares of National Bank of Washington stock (hereinafter referred to as Bank stock) were carried in the first account of the administratrix at 92, or approximately \$152,076.00 were brought forward into the second and final account and in the re-stated second and final account at this same figure. March 17, 1969, date appellants received the stock, the market was 54 bid, 57 asked - using the median 55 1/2, the value of the 1,653 shares of stock was \$91,641.00. As of August 31, 1967, the date the court order was signed for sale of funeral home, the value of the Bank stock is shown in appellee's opposition to surcharge and to exceptions to second and final account (A. 97) at \$82.00 per share or \$135,546.00. The loss in value from August 31, 1967 until March 17, 1969 (\$135,546.00 - \$91,641.00) is \$43,905.00. The value as of March 7, 1967, the date of petition to sell the Bank stock, was the same (\$135,546.00) as on August 31, 1967. The loss of interest at 6% (the rate charged by IRS for late filing) on \$43,905.00 for period August 31, 1967 to March 17, 1969 amounts to \$4,075.84. The total loss to the estate on the 1,653 shares of Bank stock is \$47,980.84 (\$43,905.00, plus \$4,075.84). Appellants are without exact knowledge of date of receipt of 191 shares as stock dividend; assuming that they were in the hands of the administratrix on August 31, 1967, their value would be the same as that of the 1,653 shares. 191 at \$82.00 per share is \$16,662.00, and the value at date of receipt, March 17, 1969, at 55 1/2 is \$10,600.00. The loss in interest at 6% for this period

of time on \$6,062.00 is \$562.77. The total loss to the estate on the 191 shares of Bank stock is \$6,624.77 (\$6,062.00, plus \$562.77).

Loss in value on Bank stock and interest:

1,653 shares, plus interest	\$47,980.84
191 shares, plus interest	<u>6,624.77</u>
TOTAL LOSS	\$54,605.61

Two thirds of which amounts to \$36,403.74, which movants must loose; one of them being a minor will suffer loss of \$6,027.29.

"An executor or administrator has a duty to exercise the utmost good faith in all his transactions affecting the estate" (31 Am. Jur. 2d 216) and, "in the performance of his fiduciary duties, an executor or an administrator, must exercise the diligence that an ordinary prudent man would exercise under like circumstances in his own affairs. He is not an insurer or guarantor, but he must use ordinary care, prudence, skill, and diligence" (31 Am. Jur. 2d 217). He may be "liable for losses to the estate resulting from his failure to exercise the diligence expected of a prudent and cautious man or from his failure to use common skill and ordinary business caution" (31 Am. Jur. 2d 218). An administratrix, *cum testamento annexo* by the nature of her appointment, cannot disregard the will, even though she renounces and elects to take under the statute. ITEM THREE, paragraphs 2 and 3 of the will, clearly indicates the intent of the testator to conserve and make the estate productive, in that the widow had absolute discretion to sell, convey, lease and invest. Thereafter, under ITEM FIVE of the will, the executor was given power — inter alia — to make divisions and distributions, wholly or partly, in cash or in kind. The administratrix well knew that there were no debts, and none were reported on the federal tax return, and the only charges against the estate were taxes and administration costs. With the sale of the funeral home, ample funds were available to meet such costs. Therefore, there was no longer

any reason to sell the Bank stock, and no reason for not distributing same. Movants, seeking financing to purchase assets, had opposed sale of stock to take in kind, but with ample funds to pay all expenses of the estate, the failure to distribute the Bank stock is contrary to the standard of care required of a fiduciary. The standard of care is set forth in "Restatement, Law of Trusts," 2d, page 176:

"Standard of Care and Skill. Except as otherwise provided by the terms of the trust, it is the duty of the trustee to exercise such care and skill to preserve the trust property as a man of ordinary prudence would exercise in dealing with his own property, and if he has a greater skill than that of a man of ordinary prudence, he is under a duty to exercise such skill as he has."

and on page 174:

"a. *STANDARD OF CARE AND SKILL.* The standard of care and skill required of a trustee is the external standard of a man of ordinary prudence in dealing with his own property. A trustee is liable for a loss resulting from his failure to use the care and skill of a man of ordinary prudence, although he may have exercised all the care and skill of which he was capable. On the other hand, if the trustee has a greater skill than that of a man of ordinary prudence, he is liable for a loss resulting from the failure to use such skill as he has."

The statement by counsel for the administratrix in letter dated October 24, 1967, to counsel for movants reads in part as follows:

"The first annual account is being prepared at this time, a copy of which will be furnished to you upon filing. Upon its approval, it is my intention to petition the Court to distribute the National Bank of Washington stock in kind as no useful purpose is being served by these certificates remaining in my safe."

compared to the statement of the administratrix in her opposition to surcharge for loss of value of Bank stock and loss of interest and opposition to exceptions to second and final account, as follows,

"* * * As a result of the objections filed by the movants the administratrix, c.t.a.'s petition to sell this stock and their stated desire to have the stock distributed in kind, the administratrix, c.t.a. *has held this asset for distribution in kind at the time of final distribution of this estate.* In the absence of a proper court order, she was not authorized to sell the stock, nor was she authorized to distribute the stock to the heirs of this estate.

2. The administratrix, c.t.a., as above stated, was under no duty to distribute this stock in the absence of a proper court order. And if she had distributed this stock without authority of a court order, she might have subjected herself to a possible surcharge liability. Furthermore, had the movants desired such an advance distribution of the stock, they could have, at any time, filed a petition for such advance distribution.

3. There was no "willful refusal" upon the part of the administratrix, c.t.a., for, as above stated, in the absence of a proper court order, there was no duty on her part to make advance distribution. In fact, pursuant to an agreement entered into in open court before Judge Holtzoff, she did make an advance distribution pro rata to the several heirs of the estate in the amount of \$150,000.00.

Furthermore, knowledge of a "falling market" cannot be imputed to the administratrix, c.t.a. particularly in view of the fact that the stock in question is a capital stock in a National Bank, the second largest bank in the Washington area."

is nothing more than an attempt to cover up, first, by hiding behind the absence of a court order, which she could have readily secured, second, by shutting her eyes to the duties of a fiduciary and, third, because the stock in question was that of an established, reliable institution. There is more than neglect involved, and your movants contend that unless this court corrects this situation, the administratrix will, by pure caprice, cause movants to suffer loss of \$36,403.74.

The administratrix, by not making distribution of the stock, also ignored the intent of the testator as set forth in ITEMS THREE AND FIVE of the will, and the express desire of movants to take in kind. In view of the law, the intent of the testator and the wishes of the movants, the actions of the administratrix demonstrates raw arbitrariness, as only a slight exercise of care on her part was required to secure the advice of the Court. Had distribution of stock been made after sale of the funeral home, adult movants could have exercised their judgment as to keeping or selling, and the guardian of the minor could have sought the advice of the Court. The refusal of the administratrix to distribute the stock deprived them of their right to decide whether to keep or sell. The lack of action or the do-nothing policy of the administratrix in regard to the Bank stock warrants correction by this Court. It is to be noted that the administratrix' herself loss is \$18,201.87, and claim that by so doing that this is an exercise of the diligence of a prudent person is without merit.

II. LOSS OF INTEREST

There were no debts, none reported on tax returns, and the withholding of surplus funds, which to movants' knowledge were left unproductive during portions of the period when received and distributed, constitutes further violation of the rule of reason or diligence of a prudent person. The plain intent of the will was disregarded in the withholding of surplus funds after payment of taxes, and allowing funds to be unproductive. *In re Marshall's Estate* (1950), Sur. 100 N.Y.S. 2d 996, on page 998 the court said:

"The objection to the failure of the executors to earn at least savings bank interest on the balance of those funds over estimated expenses is sustained. *It is not permitted to fiduciaries to retain idle in their hands funds which are not reasonably necessary for payment of charges and yet which will not within a reasonably short time be distributed to those entitled thereto.* Matter of Kruger's Estate, 139 Misc. 907, 249 N.Y.S. 772; *In re Rathbone's*

Estate, Sur. 78 N.Y.S. 2d 457, and cases cited. The executors are accordingly here charged with a sum equal to interest on \$5,000, computed at the rate of one and one-half percent from April 1, 1947 to June 30, 1949 and at the rate of two percent from July 1, 1949 to date of the decree to be entered hereon." (Emphasis added)

The administratrix well knew that months would elapse before the federal tax return would be audited. Further, the amount withheld was not reasonable, as decedent left no debts, and expenses during the period taken for the audit were nonexistent. In addition, the decedent owned an undivided one-half interest in real estate appraised in excess of \$500,000.00 that could be reached should there be need for additional funds. Movants contend that the loss of interest of \$11,474.95 on the amount of excess funds as of February 18, 1969, as set forth in copy of letter attached to supplement to motion to surcharge and exceptions to re-stated second and final account (A. 117), should be extended to date distribution was received, and surcharged to the administratrix, and it was error by the Court in denying the motion to surcharge. The unreasonableness of the amount of excess funds withheld is evidenced by the fact that after payments of costs and administration and taxes, \$100,585.83 was distributed.

III. THERE WAS NO IMMEDIATE DISTRIBUTION OF SURPLUS FUNDS FROM SALE OF REAL ESTATE

The sale of the funeral home included the real estate upon which it was situated, two adjacent parcels and one alley garage used for storing caskets. Of the entire 26 parcels of real estate, one-half of which was owned by decedent, this was the most valuable, the appraised value of decedent's one-half interest being \$279,000.00. The Court was in error in not holding that all surplus funds, after payment of taxes and amount needed for administration costs realized from the sale of the funeral home, which comprised improvements on the real estate, should have been immediately distributed in accordance with District of Columbia Code, Title 20, Section 1108 (1966 edition).

The sale price of the funeral home was \$455,916.97. The amount required to pay taxes, \$156,096.86, was less than \$176,916.97 (\$455,916.97 less \$279,000.00), the amount realized from the sale after excluding the real estate.

IV. THE COURT WAS MISLED BY STATEMENT THAT THERE WAS A SUBSTANTIAL TAX QUESTION

The Court was misled in regard to a substantial tax question, as there being no debts, the computation of the tax and the preparation of the tax returns was at most an exercise in mathematics. There was never doubt that the estate was sufficient to pay taxes, and the testator's will directed that the executor pay all taxes and that every devisee or legatee take in full without deduction for any taxes. ITEM SIX (A. 4).

V. TREATMENT OF THE ASSETS OF THE ESTATE BY VIRGINIA MAE LEE AS HER OWN PERSONAL PROPERTY AND NEGLECT OF HER DUTIES AS A FIDUCIARY

The treatment of the assets of the estate by Virginia Mae Lee, administratrix, as her own personal property and disregard of her duties as a fiduciary caused confusion in the handling of a comparatively simple estate. The administratrix c.t.a. was absent from the jurisdiction for extended periods of time, as evidenced by documents executed before notaries in foreign jurisdictions. By her refusal to consult with movants, they were obliged to incur great expense to get information in an unsuccessful attempt to finance the purchase of the assets. Funds from rental property income were deposited in her fiduciary account, forgotten, and did not reach movants until the first account was prepared 19 months after the death of the decedent, and 12 months after her qualification as administratrix. When distribution of \$100,000.00 was made to movants, one of the checks was not signed by one of the two required, another check was issued to the guardian for two minors, one of whom had then obtained his majority. The careless manner in which the affairs of the estate have been handled is patent on the face of the second

and final account, which resulted in the filing of a restated second and final account, which still had to be corrected by a revised distribution schedule. The Court's attention is invited to the following, appearing on the bottom of the revised distribution schedule:

"NOTE: The NBW stock is valued for the above distribution purposes at the revalued tax basis of \$82.47 per share."

Having been penalized by allowance of commission on the Bank stock valued at 92, exceptants are bound by the value of \$82.47 as a tax base for individual tax purposes. The title to the stock vested in the fiduciary upon the death of the testator. While in her hands its value decreased to 52.5. This decrease in value while in the exclusive control of the fiduciary, cannot be further burdened upon exceptants by establishing an unrealistic tax basis.

VI. ERROR WAS COMMITTED IN ALLOWING COMMISSION ON FUNDS NOT ACCOUNTED FOR

The allowance of a commission in the amount of the inventory or inventories, excluding what is lost or perished, is not to be construed to reward a fiduciary who does nothing while the Bank stock decreases steadily in value, and it was error by the Court in allowing commission based on the value at inventory, instead of value at time of distribution, which is the date the stock was actually accounted for. It simply is without sense to allow a commission on Bank stock at inventory value of \$152,076.00 when its value at time of receipt was \$91,641.00. The violation of all concepts of fairness is so obvious and manifest that to labor the point further would be to reflect on the intelligence of the Court. The allowance of the commission being within the exclusive cognizance of the probate court is well settled law in this jurisdiction; however, error upon which the commission is computed is not beyond correction by this Court.

CONCLUSION

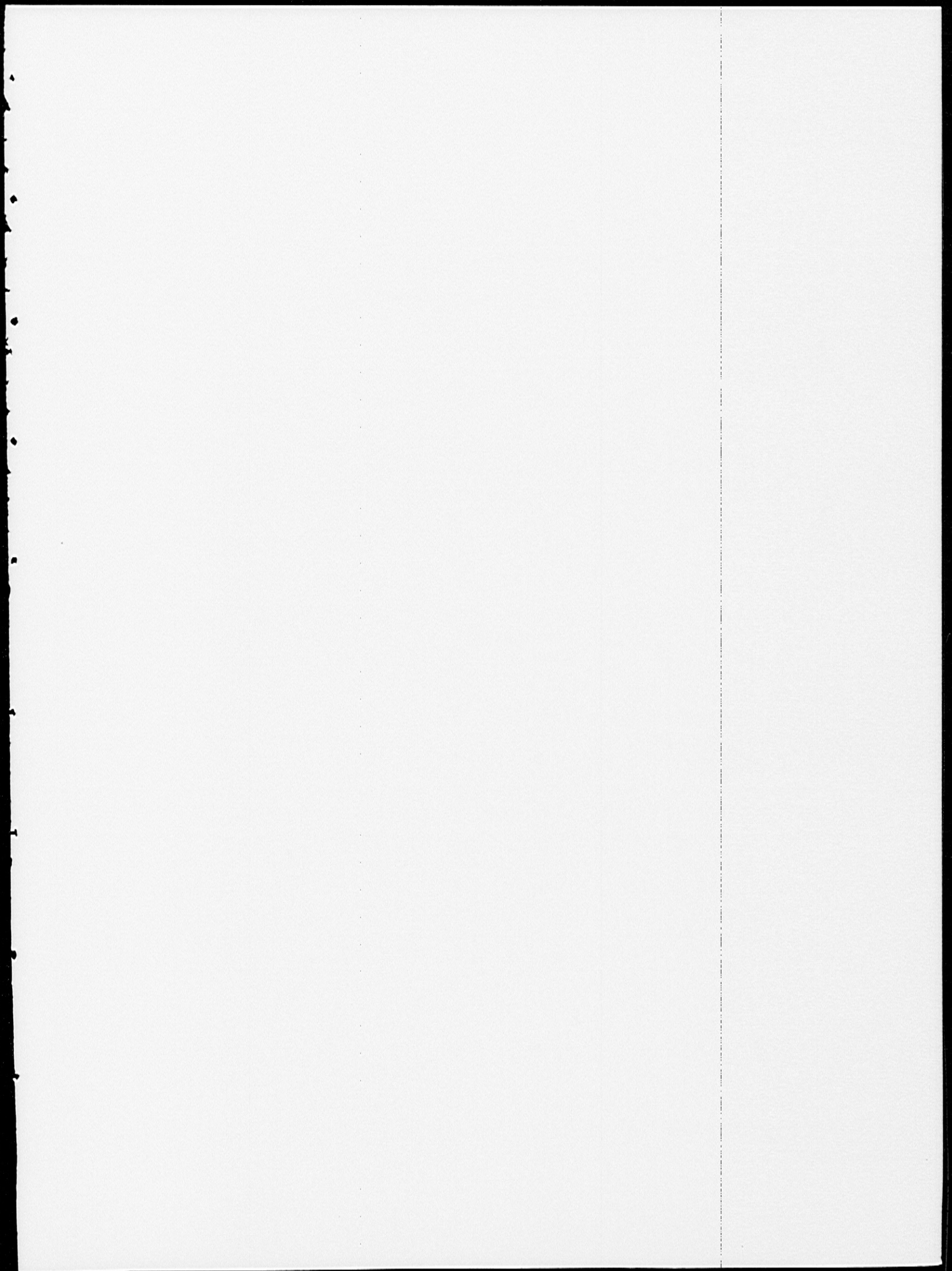
The Court's order of April 4, 1969 denying motion to surcharge and overruling exceptions, and the Court's approval of re-stated second and final account on April 13, 1969 should be set aside and mandate issue out of this Court surcharging the administratrix for loss in value of Bank stock and interest, loss of interest on funds kept unproductive and fixing the base for computing commissions.

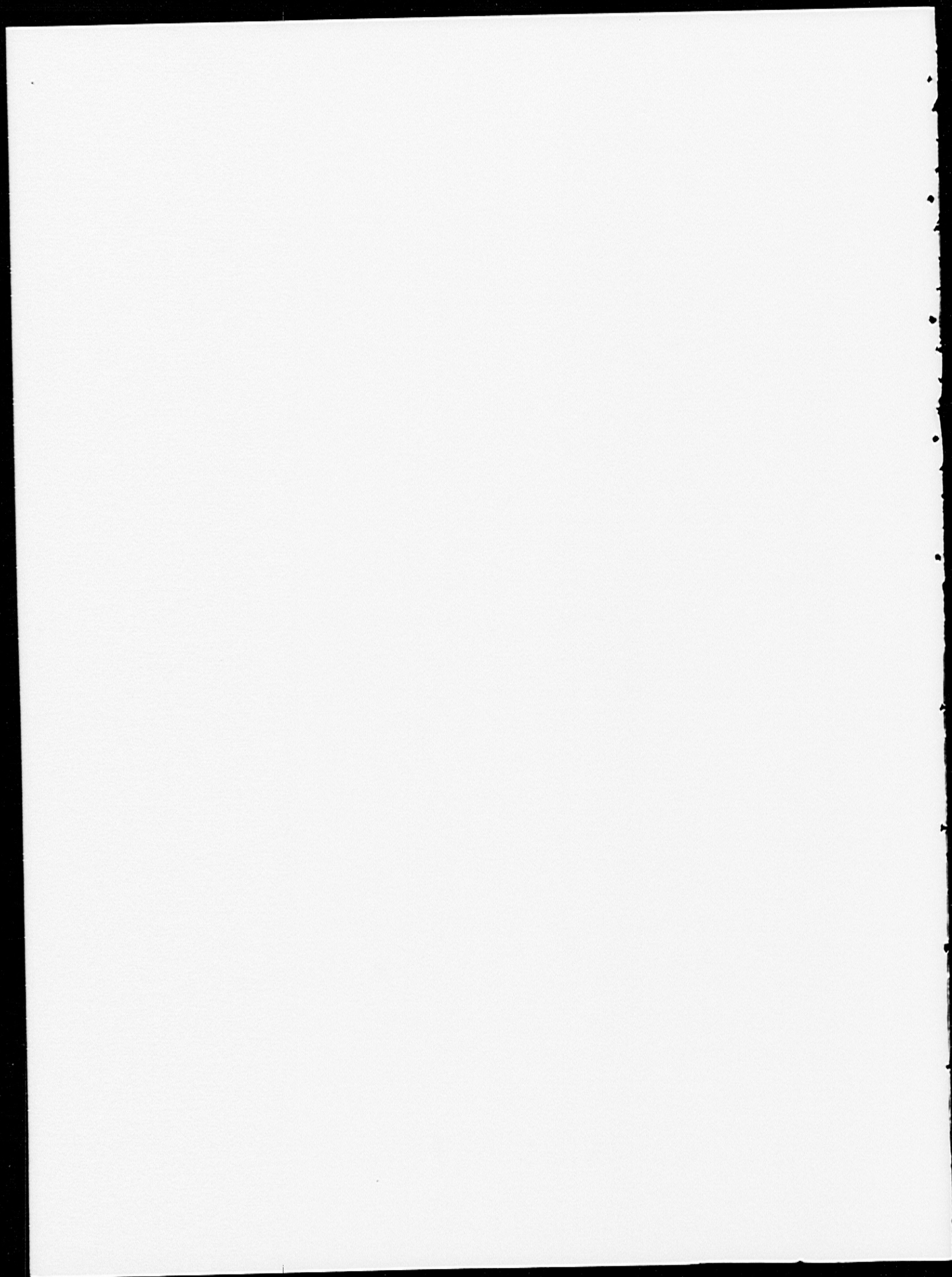
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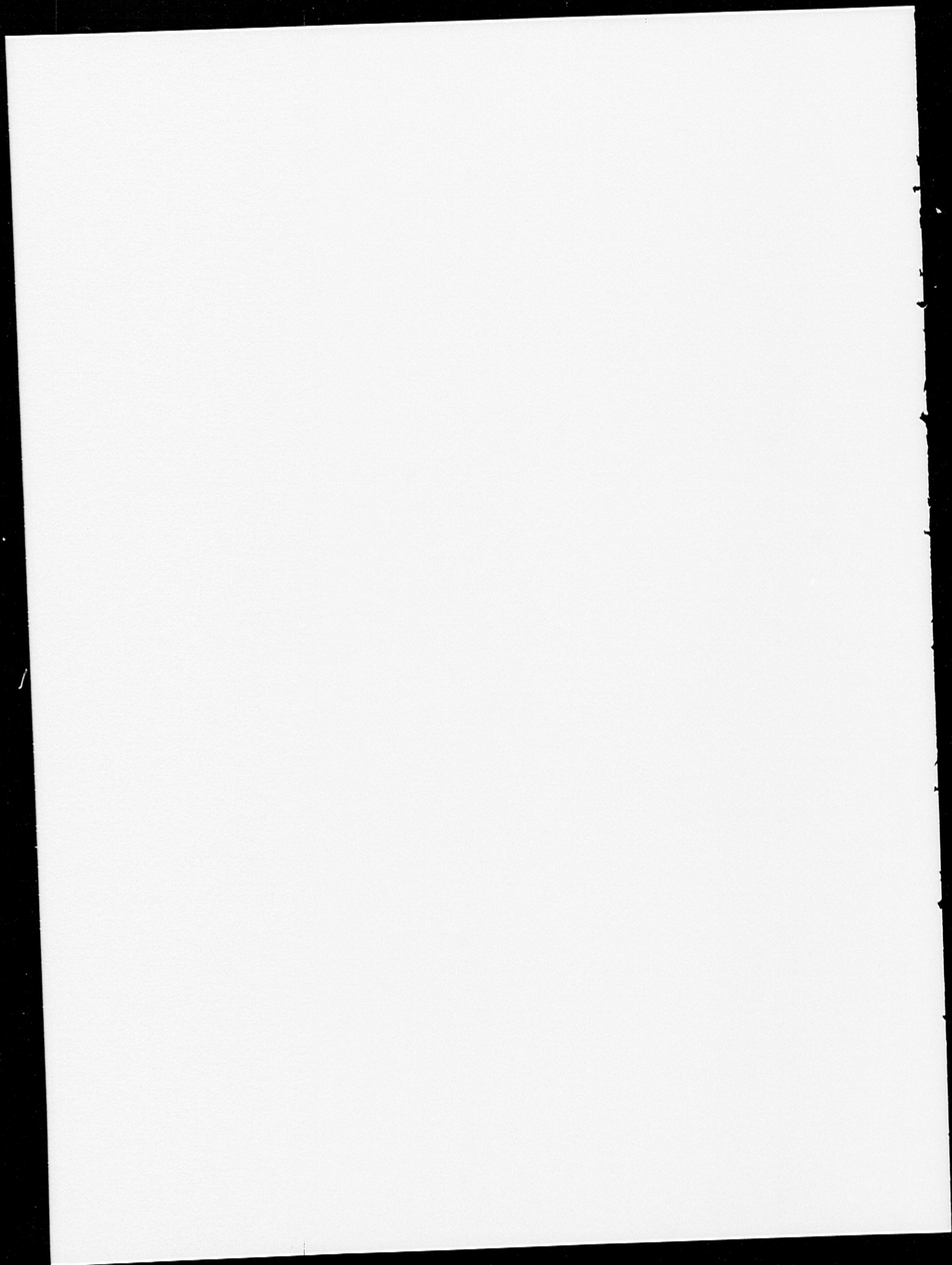
CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Date	Proceedings
<u>1966</u>	
April 6	Will dated June 30, 1965, naming John Dillon Fitzgerald executor, and in the event that he is unable to act, then naming Donald M. Sullivan executor, filed with affidavit relative thereto.
July 19	Petition of Virginia Mae Lee for probate and record of will as to real and personal estate and for letters of administration, c.t.a. filed.
July 19	Renunciation of Donald M. Sullivan, nominated executor, filed.
Oct. 19	Order admitting will to probate and record as to real and personal estate and granting letters of administration, c.t.a. to Virginia Mae Lee, and providing for a \$500.00 family allowance from estate for her use as surviving spouse of decedent. Undertaking - \$171,000.00.
Oct. 19	Undertaking approved and letters issued. Undertakings No. 190, folio 519.
Nov. 22	Renunciation of Virginia Mae Lee as to any claim to any devise or bequest made under will and election to take in lieu thereof legal share of real and personal estate, filed. Receipts No. 272, folio 74.

Date	Proceedings
<u>1966</u>	
Dec. 12	Inventory of money and debts, filed.
<u>1967</u>	
March 21	Return of appraisers - \$155,030.13, filed.
April 3	Inventory of appraised personal estate - \$155,030.13, filed.
April 7	Petition of administratrix, c.t.a., for authority to sell appraised personalty, filed with exhibit.
April 7	Order authorizing administratrix, c.t.a., to sell certain stock and U. S. Treasury bonds; and further to sell certain jewelry and items.
April 7	Affidavit of Jack Pinkston, attorney, in re objection to petition and order to sell appraised personalty, filed.
April 7	Petition of Mrs. Marion Lee Buchanan, John William Lee, III, and Mrs. Ruby M. Lee, to vacate order to sell appraised personalty, filed with certificate of service.
April 7	Order vacating order of Court of April 7, 1967.
May 5	Opposition of Mrs. Marion Lee Buchanan, John William Lee, III, and Mrs. Ruby M. Lee to petition to sell appraised personalty and motion to sell bond to cover administration expenses, debts and legacies when eventually determined in order to preserve assets or in the alternative motion to require administratrix to furnish information to enable movants to arrange financing to preserve assets, filed with certificate of mailing.
May 15	Re-stated Inventory of money and debts, filed.
May 26	Petition of administratrix, c.t.a., for authority to sell estate assets, filed with exhibit and certificate of mailing.
May 26	Petition of Ruby M. Lee for advancement of funds for support of minors, filed with certificate of service.
June 12	Answer of administratrix, c.t.a., to opposition to sell appraised personalty and motion to set bond, etc., filed with certificate of mailing.
June 13	Opposition of administratrix, c.t.a., by Robert A. Fields, attorney, for advancement of funds for support of minors, filed with certificate of service.

Date	Proceedings
<u>1967</u>	
July 11	Memorandum of Lyle L. Robertson, attorney, of points and authorities in support of petition for advancement of funds for minors, and oppositions to certain other petitions, filed with exhibit, authority and certificate of mailing.
July 11	Opposition of Marion Lee Buchanan, John William Lee, III, and Ruby M. Lee to petition to sell estate assets and motion for specific performance of agreement to convey interest in funeral home, filed with exhibit and certificate of mailing.
July 14	Answer of Robert A. Fields to opposition to petition to sell estate assets and opposition to motion for specific performance of agreement to convey interest in funeral home, filed with exhibit and certificate of service.
Aug. 31	Answer and report of guardian ad litem, filed with certificate of service.
Aug. 31	Order authorizing administratrix, c.t.a., to sell certain stock, jewelry and miscellaneous items.
Aug. 31	Order authorizing administratrix, c.t.a., to sell certain estate assets.
Dec. 4	Objection of Lyle L. Robertson, attorney, to first account of administratrix, c.t.a., filed with certificate of mailing.
Dec. 8	Transcript of proceedings before Judge Holtzoff on August 31, 1967, filed.
Dec. 8	Answer of Robert A. Fields, attorney, to objection to first account of administratrix, c.t.a., filed with certificate of mailing.
<u>1968</u>	
Jan. 30	Memoranda of Lyle L. Robertson, attorney, of points and authorities in support of objection to first account of administratrix, c.t.a., filed with certificate of mailing.
Feb. 7	Order directing the first account of administratrix, c.t.a., be referred to the Office of the Register of Wills for examination and that a report on said examination be made to this Court, and that a copy of the report be furnished to counsel of record herein.
Feb. 9	Memorandum of Judge McGuire overruling exceptions to account.
Feb. 29	Order dismissing objections to account. Certificate of mailing.

Date	Proceedings	
<u>1968</u>		
Mar. 21	First account of administratrix, c.t.a., approved and passed. Accts. No. 817, folio 460.	
<u>1969</u>		
Jan. 21	Exceptions to account and motion to surcharge administratrix, c.t.a., for loss in value of stock and loss of interest; points and authorities with certificate of mailing.	
Feb. 4	Opposition of administratrix, c.t.a., to surcharge for loss in value of certain stock and loss of interest and opposition to exceptions to second and final account, filed with certificate of mailing.	
Feb. 20	Supplement to motion of Marion Lee Buchanan, John W. Lee, III, Donald H. Lee and Ruby M. Lee to surcharge Virginia Mae Lee, administratrix, c.t.a., for loss in value of National Bank of Washington Stock and loss of interest and exception to re-stated second and final account, filed with certificate of mailing and exhibit.	
Mar. 4	Order authorizing partial distribution. (Docketed 3-6-69)	
Mar. 4	Order denying motion and overruling exceptions to account. (Docketed 3-6-69)	
Mar. 13	Re-stated second and final account of administratrix, c.t.a. approved and passed. Accts. No. 838, folio 520.	
Mar. 28	Notice of appeal of Lyle L. Robertson from Court order of March 4, 1969.	
Aug. 15	Transcript of proceedings.	
Oct. 9	Stipulation of Robert A. Fields, counsel, for supplemental record on appeal.	



APPENDIX

[Filed April 6, 1966]

LAST WILL AND TESTAMENT OF ERNEST C. LEE

I, ERNEST C. LEE, domiciled in the City of Washington, District of Columbia, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking, annulling and making void any and all wills and testaments made by me at any time prior hereto.

ITEM ONE. I direct the payment of all my just debts and funeral expenses as soon as may be practicable after my death, without regard to any limitation as to the cost of such funeral expenses imposed by statute, rule or regulation.

ITEM TWO. I give, devise and bequeath unto GEORGIA LORETTA SCHWARTZ the sum of Five Thousand (\$5,000.00) Dollars, should she survive me.

ITEM THREE. I give, devise and bequeath all the rest, residue and remainder of my property and estate, of every kind and description, real, personal and mixed, and wheresoever situate, of which I may die seized or possessed or to which I may be entitled in any manner at the time of my death, unto my beloved wife, VIRGINIA MAE LEE, for and during her natural lifetime, if she survives me.

If, for the better conservation of my said estate, my said wife shall deem it prudent or advantageous, she is hereby authorized and empowered to sell and convey in fee simple, and on such terms as she shall fix, any part of, or all of, my property hereby given to her; but the proceeds derived from any sale or conveyance shall be reinvested in other real estate or personalty, in her discretion as to kind, to be held and enjoyed by her during her natural life.

I also authorize and empower my said wife to lease any part, or all of my real estate, or any real estate in which I may have an interest at the time of my death, for a term not to exceed ten (10) years, without the consent or concurrence of any of the remaindermen, such lease to provide for the payment of rent to my wife during her life, and if she should die during the term, then to the remaindermen.

Upon the death of my said wife, said rest, residue and remainder shall go, absolutely and in fee simple, as follows:

- a) One-half thereof unto my daughter, Marion Lee Buchanan, should she survive my said wife. In the event of her death prior to my wife's death, then, in said event, said one-half interest shall go to her issue living at the time of my wife's death, per stirpes.
- b) The remaining one-half thereof unto the issue of my deceased son, William Lee, living at the time of my wife's death, per stirpes.
- c) In the event that any beneficiary under subparagraphs (a) and (b) of this Item Three is a minor at the time of my wife's death, my Executor, hereinafter named, is hereby authorized and directed, in his absolute discretion, to make payment of the bequest made to such beneficiary to a parent of said beneficiary and the receipt of the parent shall be a complete discharge of my Executor for any such payments.

ITEM FOUR. In the event that my said wife, VIRGINIA MAE LEE, and I should perish together in a common disaster so that it would be difficult to determine which of us died first, or in the event my said wife should predecease me, then, in said event, I give, devise and bequeath all of the rest, residue and remainder of my property and estate, of every kind and description,

real, personal and mixed, and wheresoever situate, of which I may die seized or possessed or to which I may be entitled in any manner at the time of my death, in fee simple and absolutely, as follows:

- a) One-half thereof unto my daughter, Marion Lee Buchanan, should she survive me. In the event of her death prior to my death, then, in said event, said one-half interest shall go to her issue surviving at the time of my death, per stirpes.
- b) The remaining one-half thereof unto the issue of my deceased son, William Lee, living at the time of my death, per stirpes.
- c) In the event that any beneficiary under subparagraphs (a) and (b) of this Item Four is a minor at the time of my death, my Executor, hereinafter named, is hereby authorized and directed, in his absolute discretion, to make payment of the bequest made to such beneficiary to a parent of said beneficiary, and the receipt of the parent of said child or children shall be a complete discharge of my Executor for any such payments.

ITEM FIVE. I hereby give to my Executor, hereinafter named, full power and authority in all matters and questions, including (without limitation) complete power and authority to sell property at private sale, or at public auction, either for cash or on credit; to effect title, windstorm, fire, or other insurance of any nature and in any amount; to make divisions and distributions wholly or partly in cash or in kind; to exchange the securities of any corporation held by them for other securities issued by the same corporation, or to sell the same and reinvest the proceeds; to vote in person or by proxy upon all stocks or other securities held by him; to pay all assessments necessary for the protection of securities held by him.

ITEM SIX. I direct and authorize my Executor, hereinafter named, to pay from my residuary estate any and all inheritance, estate, transfer taxes or death duties that may be imposed or become chargeable against my gross taxable estate; or against any of the devisees or bequests herein, it being my intention that each and every devise and bequest under this will shall be delivered to and be taken by every devisee or legatee hereunder in full and without deduction for any taxes.

ITEM SEVEN. I hereby nominate, constitute and appoint John Dillon Fitzgerald as Executor of this my Last Will and Testament, and I direct that he act as such without bond or undertaking. In the event the said John Dillon Fitzgerald is unable or unwilling to act or to continue to act as such Executor, then, in said event, I hereby nominate, constitute and appoint Donald M. Sullivan as Executor of this my Last Will and Testament, and I direct that he act as such without bond or undertaking.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed my seal at the City of Washington, District of Columbia, to this my Last Will and Testament, consisting of five pages, the first three and last of which are identified by my signature on the margins thereof, this 30th day of June, 1965.

/s/ Ernest C. Lee (SEAL)

The foregoing instrument was subscribed, sealed, published and declared by Ernest C. Lee as and for his Last Will and Testament in our presence and in the presence of each of us and we, at the same time, at his request, in his presence and in the presence of each other, hereunto subscribe our names and addresses as attesting witnesses.

/s/ Barbara J. Scott
(Address) 430 Washington Building
Washington, D. C.

/s/ W. Barrett McDonnell
(Address) 430 Washington Building
Washington, D. C.

[Filed July 19, 1966]

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
Holding a Probate Court

In re Estate of)	Administration No. 117279
)	
ERNEST C. LEE,)	Virginia Mae Lee, petitioner
)	3210 Chestnut Street, N. W.
Deceased.)	Washington, D. C.

ATTESTED RENUNCIATION OF NOMINATED EXECUTOR

I, the undersigned, Donald M. Sullivan, do hereby renounce and relinquish all my right, title and interest as the executor nominated in the last will and testament of Ernest C. Lee, deceased, bearing date the 30th day of June, 1965, and do hereby decline and refuse to act as such executor; and I hereby consent that the said will be admitted to probate, or denied probate, as the Court may determine, without notice to me, and that letters of administration, or of administration, c.t.a. may be granted on the estate of said decedent without notice to me.

Witness my hand this 11th day of July, 1966.

/s/ Donald M. Sullivan

Witness:

/s/ Alfonzo D. Jordan, Sr.

[Filed July 19, 1966]

**PETITION FOR PROBATE OF WILL, AND FOR
LETTERS OF ADMINISTRATION, C.T.A.**

The petition of Virginia Mae Lee respectfully represents to this Honorable Court as follows:

1. That she is an adult citizen of the United States and a resident of the District of Columbia, of adult age, the widow of the deceased, and not under any legal disability. That the nominated executor, John Dillon Fitzgerald, predeceased the testator and the substitute executor, Donald M. Sullivan, has renounced and relinquished his right, title and interest as the executor nominated in the last will and testament of Ernest C. Lee, deceased, and has consented that the said will be admitted to probate and that letters of administration, c.t.a. may be granted.

2. That Ernest C. Lee, late an adult citizen of the United States, domiciled in the District of Columbia, died on the 27th day of March, 1966, leaving one executed paper in the nature of a last will and testament bearing date the 30th day of June, 1965, which said will is now on file in the office of the Register of Wills for the District of Columbia; that no other papers in the nature of a testamentary disposition of the decedent's estate has been found, although search has been made, and this petitioner believes that the above-mentioned paper is in fact the last will and testament of said decedent.

3. That said testator left as his only heirs at law and next of kin the following:

Virginia Mae Lee, your petitioner, widow
3210 Chestnut Street, N. W., Washington, D. C.

Marion Lee Buchanan, adult daughter,
1703 Sherwood Road, Silver Spring, Maryland

Children of a deceased son, J. William Lee:

J. William Lee, III, adult
515 Thayer Avenue, Apartment 508, Silver Spring, Maryland

Donald Lee, aged seventeen years,
c/o Mrs. Ruby Lee, his mother, 224 Williamsburg Drive, Silver Spring, Maryland

Nancy Lee, aged fourteen years,
c/o Mrs. Ruby Lee, her mother, 224 Williamsburg Drive, Silver Spring, Maryland

It is the belief of the petitioner that there are no other heirs and next of kin than those mentioned herein.

4. At the time of his death, said testator was seized of the following real estate:

Sole Interest:

Lot 34 in Square 758, improved by premises 223 Constitution Avenue, N. E., Washington, D. C.	\$ 20,000.00
Lots 20 and 21, Block "D", North Beach Calvert County, Maryland	10,000.00
1468 South Betty Lane Clearwater, Florida	10,000.00

A one-half interest in:

Lot 36 in Square 783, improved by premises 312 Maryland Avenue, N. E., Washington, D. C. Assessed at \$12,025.00	6,012.50
Lot 35 in Square 783, improved by premises 314 Maryland Avenue, N. E., Washington, D. C. Assessed at \$11,595.00	5,797.50
Lot 34 in Square 783, improved by premises 316 Maryland Avenue, N. E., Washington, D. C. Assessed at \$11,449.00	5,724.50
Lot 33 in Square 783, improved by premises 318 Maryland Avenue, N. E., Washington, D. C. Assessed at \$11,450.00	5,725.00
Lot 32 in Square 783, improved by premises 320 Maryland Avenue, N. E., Washington, D. C. Assessed at \$11,450.00	5,725.00
Lot 31 in Square 783, improved by premises 322 Maryland Avenue, N. E., Washington, D. C. Assessed at \$11,450.00	5,725.00
Lot 30 in Square 783, improved by premises 324 Maryland Avenue, N. E., Washington, D. C. Assessed at \$11,450.00	5,725.00

Lot 29 in Square 783, improved by premises 326 Maryland Avenue, N. E., Washington, D. C. Assessed at \$11,450.00	5,725.00
Lot 28 in Square 783, improved by premises 328 Maryland Avenue, N. E., Washington, D. C. Assessed at \$11,850.00	5,925.00
Lot 27 in Square 783, improved by premises 330 Maryland Avenue, N. E., Washington, D. C. Assessed at \$11,450.00	5,725.00
Lot 26 in Square 783, improved by premises 332 Maryland Avenue, N. E., Washington, D. C. Assessed at \$11,450.00	5,725.00
Lot 25 in Square 783, improved by premises 334 Maryland Avenue, N. E., Washington, D. C. Assessed at \$11,450.00	5,725.00
Lot 24 in Square 783, improved by premises 336 Maryland Avenue, N. E., Washington, D. C. Assessed at \$11,821.00	5,910.50
Lot 23 in Square 783, improved by premises 338 Maryland Avenue, N. E., Washington, D. C. Assessed at \$11,391.00	5,695.50
Lot 22 in Square 783, improved by premises 226 Fourth Street, N. E., Washington, D. C. Assessed at \$11,252.00	5,626.00
Lot 18 in Square 783, improved by premises 315 C Street, N. E., Washington, D. C. Assessed at \$9,167.00	4,583.50
Lot 19 in Square 783, improved by premises 317 C Street, N. E., Washington, D. C. Assessed at \$8,745.00	4,372.50
Lot 20 in Square 783, improved by premises 319 C Street, N. E., Washington, D. C. Assessed at \$8,497.00	4,248.50
Lot 21 in Square 783, improved by premises 321 C Street, N. E., Washington, D. C. Assessed at \$10,792.00	5,396.00

Lot 809 in Square 758, rear of premises 221 Constitution Avenue, N. E., Washington, D. C. Assessed at \$3,169.00	1,584.50
Lots 23 and 24 in Square 782, improved by premises 310-312 C Street, N. E., Washington, D. C. Assessed at \$9,031.00	4,515.50
Lot 802 in Square 782, improved by premises 309 Third Street, N. E., Washington, D. C. Assessed at \$4,480.00	2,240.00
Lot 833 in Square 204, improved by premises 2018-2020 Fourteenth Street, N. W., Washington, D. C. Assessed at \$34,052.00	17,026.00
Lots 800 and 801 in Square 204, in rear of premises 1421 through 1429 "U" Street, N. W., Washington, D. C. Assessed at \$6,962.00	3,481.00
Lot 28 in Square 782, improved by premises 302 Fourth Street, N. E. and 321 Massachusetts Avenue, N. E., Washington, D. C. Assessed at \$156,613.00	78,306.50
Lot 808 in Square 995, improved by premises 722 Eleventh Street, S. E., Washington, D. C. Assessed at \$7,918.00	3,959.00

all of which are unincumbered.

5. Said testator was possessed at the time of his death of personal property as follows, valued at approximately \$170,500.00:

Jewelry and coins	\$ 1,000.00
Government bonds having a total face value	6,200.00
1653 shares capital stock National Bank of Washington @ \$85.00	140,505.00
National Bank of Washington checking account	2,863.00
One-half interest in furniture and chattels of J. William Lee & Sons, Co. partnership, Fourth & Massachusetts Avenue, N. E., Washington, D. C. Total value (not including Good Will) \$40,000.00	20,000.00

6. The decedent left debts, including his last illness and funeral expenses, estimated at \$3,000.00.

7. The petitioner files this petition for the relief prayed herein without prejudice to her right to take action under the provision of Title 19, section 113, District of Columbia Code, revised part III, 1965.

WHEREFORE, the petitioner prays:

1. That notice by citation or by publication or by both as may be necessary shall issue directed to the above named heirs at law and next of kin, and that a guardian ad litem be appointed to represent the infants, Donald and Nancy Lee, at the hearing of the application to admit the will to probate.

2. That said paper writing dated the 30th day of June, 1965, be admitted to probate and record as the last will and testament of the said Ernest C. Lee, deceased, and as a will of both real and personal property.

3. That letters of administration, c.t.a. issue to this petitioner, and for such other and further relief as the nature of the case may require and to this Honorable Court shall seem proper.

/s/ Virginia Mae Lee
Petitioner

/s/ Robert A. Fields
Attorney for Petitioner
614 Indiana Avenue, N. W.
St 3-4142

[Jurat]

[Dated October 19, 1966]

ORDER FOR PROBATE AND LETTERS OF ADMINISTRATION, C.T.A.

Upon consideration of the petition of Virginia Mae Lee for probate and letters of administration, c.t.a. filed herein on the 19th day of July, 1966, and it appearing to the satisfaction of the Court that the last will and testament of Ernest C. Lee, deceased, bearing date the 30th day of June, 1965, has been duly proven, and that service of process has been completed against all the heirs at law and next of kin of said decedent, and that the answer of the guardian ad litem appointed herein for Nancy Lee and Donald Lee, infant heirs at law and next of kin, has been filed and objections heretofore filed by guardian ad litem having been withdrawn in open Court, it is by the Court this 19th day of October, 1966,

ADJUDGED, ORDERED and DECREED:

1. That the said will be and is hereby admitted to probate and record as a will of real and personal property, and that letters of administration, c.t.a. be granted and shall issue to Virginia Mae Lee, provided she first files her undertaking in the penal sum of One Hundred Seventy-One Thousand Dollars, with surety approved by the Court, conditioned for the faithful performance of her trust.

2. That the sum of \$500.00 is hereby allowed out of the personal estate to Virginia Mae Lee as surviving widow for her own use, in accordance with law.

/s/ Alexander Holtzoff
Judge

[Dated August 3, 1966]

RENUNCIATION OF DEVICES AND BEQUESTS

I, Virginia Mae Lee, widow of Ernest C. Lee, late of the District of Columbia, deceased, renounce and quit all claim to any devise or bequest made to me by the last will of my husband exhibited and proved according to law; and I elect to take in lieu thereof my legal share of the real and personal estate of my deceased husband.

Dated this 3rd day of August, 1966.

/s/ Virginia Mae Lee

[Jurat]

[Dated December 10, 1966]

INVENTORY OF MONEY AND DEBTS DUE TO DECEASED

1/2 interest in J. William Lee & Sons' Company (see Exhibit A attached)	\$ 94,064.66
Deposit National Bank of Washington	5,366.46
U. S. Government bonds	<u>6,200.00</u>
TOTAL	<u><u>\$105,631.12</u></u>

District of Columbia, to wit:

Virginia Mae Lee, Administratrix, c.t.a. of estate of Ernest C. Lee, late of District of Columbia, deceased, do solemnly swear that the foregoing schedule is a true and perfect inventory of all the Money belonging to the deceased, and of all the Debts due the said deceased, which have come to my hands or knowledge and that I will well and truly charge myself with all money and all and every such debt or debts as shall hereafter come to my knowledge or possession.

/s/ Virginia Mae Lee

[Jurat]

[Dated March 27, 1966]

EXHIBIT "A"

J. WILLIAM LEE & SONS' COMPANY
 TRADING AS LEE'S FUNERAL HOME
 BALANCE SHEET - (SEE NOTE "A")

March 27, 1966

Assets

Cash	\$ 23,546.27
Accounts receivable	161,131.73
Inventory	10,136.14
Land and buildings	558,000.00
Furnishings, equipment and automobiles	45,813.75
Prepaid taxes	<u>1,451.32</u>
Total Assets	<u>\$800,079.21</u>

Liabilities and Net Worth

Accounts payable	65,739.18
Taxes withheld from salaries	474.65
Payroll taxes payable	<u>2,383.50</u>
Total Liabilities	68,597.33
Net Worth	<u>731,481.88</u>
Total Liabilities and Net Worth	<u>\$800,079.21</u>

Note "A" - This Exhibit is to be read only in conjunction with the accompanying transmittal letter dated November 23, 1966.

[Received April 12, 1967]

APPRAISEMENT OF PERSONAL ESTATE OF ERNEST C. LEE

We, The undersigned, appointed by the said Court to examine and appraise the personal estate of ERNEST C. LEE, late of the District of Columbia, deceased, do hereby certify that the following schedule is a true and correct appraisal of said estate insofar as it has come to our knowledge, a return of which we have made to the Court of even date herewith:

At Register of Wills	Leather covered jewel case with lock	3.00
	10 Miscellaneous organization pins, some yellow gold, some gilt metal	5.00
	Sterling silver set; pair of cuff links and tie tac, cuff links are monogramed "The Boss"	2.50
	Combination pen knife and money clip	.50
	Gilt metal cuff links and tie bar with Masonic seal	2.50
	Phillipe Patek yellow gold case wrist watch with yellow gold expansion band, as is	20.00
	2 Buttons, 3 studs, 5 collar clips, 7 tie bars, key chain, pair of cuff links, tie tac, 2 gilt metal chains, metal fob	8.00
	Another tie pin, 2 pairs of yellow gold cuff links, 3 yellow gold studs	2.50
	Yellow gold figural stick pin set with 3 diamonds and 2 diamond chips	20.00
	Gilt metal bracelet, as is	<u>.50</u>
	Amount Carried Forward	\$ 64.50

Sm	100 shares, Stock, Technical Service, Incorporated. Appraised at 1-5/8	\$ 162.50
Lg	1,575 shares, Capital Stock, National Bank of Washington. Appraised at 92	144,900.00
Lg	78-15/20 shares, Capital Stock, National Bank of Washington. Appraised at 92	7,245.00
Cg	3 \$1,000 2-1/2% United States Treasury Bonds. Due June 15, 1972, Appraised at 88-30/32	<u>2,668.13</u>
	TOTAL	<u><u>\$155,040.13</u></u>

* * *

Witness our hands and seals this 21st day of March, A.D. 1967.

/s/ Robert K. Myers	(SEAL)
/s/ Suzanne Marie Hughes	(SEAL)

District of Columbia, to wit:

I, the undersigned, Virginia Mae Lee, Administratrix, c.t.a. of the Estate of Ernest C. Lee, late of the District of Columbia, deceased, do solemnly swear that the foregoing schedule is a true and perfect Inventory of the Goods, Chattels, and Personal Estate of said deceased, except money belonging to, and debts due, the deceased, that have come to my hands or possession at the time of the making thereof, and that what hath since, or shall hereafter, come to my hands or possession I will return an additional inventory of; that I know of no concealment of any part of the deceased's estate by any person whatsoever, and that if I shall hereafter discover any concealment, or suspect any to be, I will acquaint the Court with the same.

/s/ Virginia Mae Lee

[Jurat]

[Filed April 7, 1967]

PETITION TO SELL APPRAISED PERSONALTY

The petition of Virginia Mae Lee respectfully shows to the Court:

1. That your petitioner is the duly appointed, qualified and acting administratrix, c.t.a. of the estate of the above named Ernest C. Lee, deceased.

2. That among the assets of the estate which have come into the possession of this administratrix, c.t.a. are the following assets with the related appraisal value:

1,653-3/4 shares of National Bank of Washington stock at 92	\$152,145.00
100 shares, Capital Stock, Technical Service, Inc.	162.50
Jewelry, etc.	64.50
3 \$1,000 2-1/2% United States Treasury Bonds	<u>2,668.13</u>
TOTAL	<u><u>\$155,040.13</u></u>

3. That the above assets are in the possession of and under the control of the administratrix, c.t.a. herein, all of which have been inventoried and appraised for value, and are not specifically bequeathed.

4. That the cash balance now in the hands of the administratrix, c.t.a. is not sufficient to pay debts, administration expenses, taxes and pecuniary legacies, and that it is reasonable and to the best interest of the estate that the sale of the above described stock and appraised personalty be speedily made.

WHEREFORE, the premises considered, your petitioner prays:

1. That she be authorized to sell 1,653-3/4 shares of National Bank of Washington stock at not less than the market price on the date of sale.

2. That she be authorized to sell 100 shares of Capital Stock, Technical Service, Incorporated, at not less than the market price on the date of sale.

3. That she be authorized to sell the three \$1,000.00 2-1/2% U. S. Treasury bonds.

4. That she be authorized to sell the jewelry and miscellaneous items set forth in the inventory of appraised personalty either at public auction to the highest bidder or at private sale for not less than the appraised value thereof.

5. And for such other and further relief as to the Court may seem meet and proper.

/s/ Virginia Mae Lee

/s/ Robert A. Fields
Attorney for Petitioner
614 Indiana Avenue, N. W.
Washington, D. C.

[Jurat]

[Dated April 7, 1967]

ORDER TO SELL APPRAISED PERSONALTY

Upon consideration of the petition of Virginia Mae Lee, administratrix, c. t. a. of the estate of Ernest C. Lee, deceased, filed herein on the 7th day of April, 1967, it is by the Court this 7th day of April, 1967.

ORDERED:

1. That the said Virginia Mae Lee, administratrix, c.t.a. aforesaid, be and she is hereby authorized and directed to sell 1653-3/4 shares of National Bank of Washington stock at not less than the market price on the date of sale.

2. That Virginia Mae Lee, administratrix, c.t.a., aforesaid, be and she is hereby authorized and directed to sell 100 shares of capital stock, Technical Service Incorporated, at not less than the market price on the date of sale.

3. That the said Virginia Mae Lee, administratrix, c.t.a. aforesaid, be and she is hereby authorized and directed to sell the three \$1,000.00 2½% U.S. Treasury bonds.

4. That Virginia Mae Lee, administratrix, c.t.a. aforesaid, be and she is hereby authorized and directed to sell the jewelry and miscellaneous items set forth in the inventory of appraised personalty filed in this cause, at public auction to the highest bidder, or at private sale for not less than the appraised value of the articles sold, as may seem to the administratrix, c.t.a. to be to the best interests of the estate.

/s/ Joseph C. McGarraghy
Judge

[Filed, April 7, 1967]

PETITION TO VACATE ORDER TO SELL APPRAISED PERSONALTY

The petition of Mrs. Marion Lee Buchanan, John William Lee, III, and Mrs. Ruby M. Lee shows to the Court as follows:

1. That Mrs. Marion Lee Buchanan, and John William Lee, III, adults, daughter and grandson, respectively, of the decedent, are heirs at law and legatees under the Will of the decedent admitted to probate in the above-referenced matter.

2. Mrs. Ruby M. Lee, widow of a deceased son of decedent, Mother, Custodian, and by appointment of the Circuit Court of Montgomery County, Maryland, in Equity No. 31,943, Legal Guardian of Donald H. Lee and Nancy G. Lee, minors. Said minors are heirs at law and legatees under the Will of decedent admitted to probate in the above-referenced matter, being decedent's grandchildren. (Copy of Order dated August 3, 1966, appointing Mrs. Ruby M. Lee Guardian is in the Court file.)

3. That the order granted by this Court on April 7, 1967, approving the petition of the Administratrix to sell personalty, consisting of 1,653-3/4 shares of National Bank of Washington stock appraised at \$152,145.00; 100 shares Technical Service, Inc. stock appraised at \$162.50; 3 \$1,000.00 U. S. Treasury bonds (2½%) appraised at \$2,668.13, and jewelry appraised at \$64.50, be vacated for the reason that petitioners were not given adequate notice as appears in the affidavits attached hereto and prayed read as a part hereof.

4. That your petitioners, representing 2/3 interest in the estate, object to the petition of the administratrix to sell personalty for the following reasons:

- A. That the amount of the debts, administration expenses, and taxes are not set forth in the petition to apprise the Court, as well as the heirs of how much money must be made available to pay the same.
- B. The petition does not contain any accounting or statement which shows the amount of money, if any, the administratrix has received to date, so that the amount of additional funds needed to pay the debts, administration expenses and taxes can be determined.

5. Your petitioners have the right to distribution of assets in kind, and submit herewith that they are willing and able to advance the necessary funds for their 2/3 share of the debts, administration expenses and taxes, when determined.

WHEREFORE, the premises considered, your petitioners pray:

- 1. That the Order of this Court granted April 7, 1967, be vacated and set aside.

2. And for such other and further relief as to the Court may seem proper.

/s/ Marion Lee Buchanan

/s/ John William Lee, III

Donald H. Lee
Nancy G. Lee

By: /s/ Ruby M. Lee, Custodian and
Legal Guardian.

Petitioners.

[Jurat]

[Certificate of Service]

[Filed April 8, 1967]

AFFIDAVIT OF JACK PINKSTON

TO THE HONORABLE, THE JUDGES OF SAID COURT:

Comes now Jack Pinkston, Attorney at Law, Silver Spring, Montgomery County, Maryland, and makes affidavit as follows:

1. That I am the personal attorney of Mrs. Marion Lee Buchanan, Mr. John William Lee, III, and Mrs. Ruby M. Lee, individually and as the mother and legal guardian of her minor children, Donald H. Lee and Nancy G. Lee; and that I have represented them in the matter of their respective interests inherited by them from the late Mr. Ernest C. Lee, since May, 1966.

2. That continuously since Mrs. Virginia Mae Lee was appointed Administratrix, c.t.a. of the above named estate, I have requested Robert A. Fields, Esquire, Attorney for the Administratrix, to give me ample notice prior to any disposition of any of the personalty of said Ernest C. Lee, who was the father,

grand-father and father-in-law of my clients, respectively, because some or all of my clients probably would like to make necessary arrangement to have some or all of said personalty pass to them in kind.

3. On Thursday, April 6, 1967, I received via U. S. Mail, a copy of the Administratrix' "Petition to Sell Appraised Personalty", together with a letter from Mr. Fields in which he said in part, "I intend to present the Order to Sell to the Court for signature on Friday of this week and, therefore, if you have any questions with reference to this matter, please let me hear from you." That immediately upon receipt of said letter, I telephoned Mr. Fields but was advised by his secretary that he was in court, whereupon I left word with said secretary urgently requesting Mr. Fields please to call me immediately upon his return to the office. Since I did not hear from Mr. Fields by about 3 o'clock that afternoon, April 6, 1967, I again telephoned Mr. Fields' office but received only a signal indicating that his telephone was busy. I repeated these telephone calls to Mr. Fields' number every few minutes until about or shortly after 4 P.M. on said date, when I no longer received said busy signal, but no one answered Mr. Fields' telephone. Thereupon, I telephoned Lyle L. Robertson, Esquire, and asked him to intercede to prevent sale of said personalty, because my clients want some or all of said personalty. I have called Mr. Fields' telephone number several times since then, but received either a busy signal or no answer. Mr. Fields still has not called or otherwise communicated with me in response to my telephoned request left with his secretary on Thursday, April 6, 1967. This affidavit is being prepared at 2 o'clock P.M. Saturday, April 8, 1967, and is submitted in support of Petition to Vacate Order to Sell Appraised Personalty.

Respectfully submitted,

/s/ Jack Pinkston

[Jurat]

[Filed April 7, 1967]

ORDER

Upon consideration of the petition filed herein by Marion Lee Buchanan, John William Lee, III, adults and legatees, and Donald H. Lee and Nancy G. Lee, minors and legatees, by their legal guardian Ruby M. Lee, to vacate order to sell appraised personalty granted April 7, 1967, it is by the Court this 10th day of April, 1967,

ORDERED, that the said order of April 7, 1967, be and the same is hereby, vacated and set aside.

/s/ Judge McGarity

[Filed May 5, 1967]

**OPPOSITION TO PETITION TO SELL APPRAISED PERSONALTY
and
MOTION TO SET BOND TO COVER ADMINISTRATION EXPENSES,
DEBTS AND LEGACIES WHEN EVENTUALLY DETERMINED IN
ORDER TO PRESERVE ASSETS
or in the alternative
MOTION TO REQUIRE ADMINISTRATRIX TO FURNISH
INFORMATION TO ENABLE MOVANTS TO ARRANGE
FINANCING TO PRESERVE ASSETS**

Comes now Mrs. Marion Lee Buchanan, John William Lee, III, and Mrs. Ruby M. Lee for opposition to the petition of the administratrix to sell appraised personalty and in support of their motion to set bond to cover administration expenses, debts and legacies when eventually determined in order to preserve assets or in the alternative to require administratrix to furnish information to enable movants to arrange financing to preserve assets represent to the Court as follows:

1. That Mrs. Marion Lee Buchanan and John William Lee, III, adults, daughter and grandson, respectively, of the decedent, are heirs at law and legatees under the Will of the decedent admitted to probate in the above-referenced matter.

2. That Mrs. Ruby M. Lee, widow of a deceased son of decedent, Mother, Custodian, and by appointment of the Circuit Court of Montgomery County, Maryland, in Equity No. 31,943, Legal Guardian of Donald H. Lee and Nancy G. Lee, minors. Said minors are heirs at law and legatees under the Will of the decedent admitted to probate in the above-referenced matter, being grandchildren of decedent.

3. That your movants desirous of taking the assets of the estate in kind, petitioned the Court to vacate and set aside Order to sell appraised personalty, which was granted by Order signed April 10, 1967.

4. That your movants have for several months endeavored to secure from the administratrix an accounting whereby they would be enabled to secure financing to purchase assets or advance funds to pay debts, legacies and administration costs, so as to expedite the closing of the estate. On April 11, 1967, Jack Pinkston, Attorney for your petitioners, addressed a letter to Robert A. Fields, Attorney for the administratrix, in which he acknowledged receipt of copies of appraisal covering the jewelry of \$64.50, stocks and bonds totaling \$155,130.15, and the inventory of money and debts due deceased showing \$105,631.13, and requested a copy of an attachment designated "Exhibit A" which was not received.

5. Thereafter, the attorney for the administratrix contacted the attorney for your petitioner by telephone and explained the basis for the figure of \$94,064.66, which did not include any interest on stocks or bonds, or return from the funeral home business since the death of the testator. On May 2, 1967, the attorney for your petitioner received a letter in response to his April 11, 1967 letter, which did not furnish the information desired.

6. Your movants have not been successful in securing the financial statements or the income tax reports for the four years preceding the death of the testator, of the J. William Lee's Sons Co., which conducts the business known as the Lee Funeral Home, located at 4th and Massachusetts Avenue, N. E., Washington, D. C.

7. Your movants are entitled to, and need the aforementioned information in order to arrange for timely financing to take the assets in kind, protect their interest in the estate, and also carry out the wishes of the founder of the business, J. William Lee, deceased father of the testator.

WHEREFORE, premises considered your movants pray:

1. That the petition to sell appraised personalty be denied.
2. That the administratrix be required to furnish your movants with a statement of income, statement of expenses, and the amount of the debts, if any.
3. That the administratrix be required to furnish your movants with a copy of Income Tax Reports for the four years preceding death of the testator filed by the Lee Funeral Home, J. William Lee's Sons Co., or whatever name for the business conducted at 4th and Massachusetts Ave., N. E., Washington, D. C.
4. That the administratrix furnish your movants with an itemization of the costs of administration to date.
5. That the Court set bond in amount sufficient to cover the two-thirds interest of your movants in the estate to guarantee the payment of the debts, legacies and administration expenses, or both as the case may be, that shall be eventually found to be due, and costs of administration.
6. That the Court allow your movants 40 days after receipt of information requested, or 40 days after hearing of this matter to file bond, or advance funds as may eventually be necessary to meet administration costs.

7. And for such other and further relief as to the Court may seem meet and proper.

/s/ Marion Lee Buchanan

/s/ John William Lee, III

Donald H. Lee and
Nancy G. Lee

By: /s/ Ruby M. Lee, Custodian and
Legal Guardian.

Movants.

[Jurat]

[Certificate of Service]

[Filed May 4, 1967]

**ANSWER TO OPPOSITION TO PETITION TO SELL APPRAISED PERSONALTY
and
MOTION TO SET BOND TO COVER ADMINISTRATION EXPENSES, DEBTS
AND LEGACIES WHEN EVENTUALLY DETERMINED IN ORDER TO
PRESERVE ASSETS
or in the alternative
MOTION TO REQUIRE ADMINISTRATRIX TO FURNISH INFORMATION
TO ENABLE MOVANTS TO ARRANGE FINANCING TO PRESERVE
ASSETS**

Comes now Virginia Mae Lee, administratrix, c.t.a. of the estate of Ernest C. Lee, and in answer to the above opposition and motions filed herein on May 5, 1967, represents to this Honorable Court as follows:

1. That she admits paragraphs 1, 2, and 3 of the above opposing pleading.
2. In answer to paragraph 4 thereof, she states that the attorney for the administratrix has kept counsel for the other heirs of this estate as fully advised

as he has been able as to the status of the finances of this estate. As, by far, the largest charge against this estate has been the federal estate tax liability which has just been computed and filed, the petitioner now states a firm estimate of the debts, charges and expenses of the estate as follows:

Court and administrative costs, counsel fees and commissions	\$ 63,700.65
Federal Estate tax liability	148,709.07
Bequest to Loretta Schwartz	5,000.00
	<u>\$217,409.72</u>

The administerable assets of the estate consist of:

Cash (approximately)	9,000.00
Savings bonds valued at	5,700.00
National Bank of Washington stock appraised at \$152,000.00, now having a current market value of	137,000.00
Winding up interest in funeral home business having market value of	450,000.00
	<u>\$601,700.00</u>

3. In answer to paragraph 6, the administratrix states that she has furnished to the opposing counsel copies of all the financial records relating to the conduct of the funeral home business which are in her possession, including partnership tax return for 1965 and 1966, the fiduciary returns for 1966 and the federal estate and D. C. Inheritance Tax returns which have just been filed.

4. That it is clear in view of the resumé of the administerable assets of the estate set forth in paragraph 2, *supra*, and the debts, charges and bequests of the estate also set forth therein that the administratrix must sell or otherwise liquidate the stocks and bonds as petitioned by her on or about April 4, 1967, and it further appears to be necessary at this time to liquidate

the interest in the funeral home on the basis of her petition to sell estate assets filed herein on May 26, 1967, in order to obtain sufficient cash funds to pay the above stated debts, charges and bequests of the estate in the approximate amount of \$217,409.72.

WHEREFORE, the premises considered, your petitioner prays:

1. That the Opposition to Petition to Sell Appraised Personalty, etc., be denied.
2. That she be authorized and directed to sell appraised personalty as prayed in her petition heretofore filed on or about April 1, 1967.
3. That she be further authorized to accept the offer to purchase the estate interest in the J. William Lee's Sons Company as set forth in her petition to sell estate assets filed herein on May 26, 1967.
4. And for such other and further relief as to the Court may seem meet and proper.

/s/ Virginia Mae Lee

/s/ Robert A. Fields
Attorney for petitioner
614 Indiana Avenue, N. W.
Washington, D. C. 20004

[Filed May 15, 1967]

RESTATED INVENTORY OF MONEY AND DEBTS DUE TO DECEASED

Estate interest (50%) in partnership business known as J. William Lee's Sons Company (funeral home). 50% of value of net worth set forth in Exhibit A attached hereto - 1/2 of \$731,481.88	\$365,740.94
Deposit National Bank of Washington	5,366.46

U. S. Government bonds	6,200.00
American currency	<u>15.50</u>
	\$377,322.90

District of Columbia, *to wit*:

Virginia Mae Lee, Administratrix, c.t.a. of Estate of Ernest C. Lee, late of the District of Columbia, deceased, do solemnly swear that the foregoing schedule is a true and perfect inventory of all the Money belonging to the deceased, and of all the Debts due the said deceased, which have come to my hands or knowledge and that I will well and truly charge myself with all money and all and every such debt or debts as shall hereafter come to my knowledge or possession.

/s/ Virginia Mae Lee

[Jurat]

[Received May 27, 1967]

PETITION TO SELL ESTATE ASSETS

The petition of Virginia Mae Lee respectfully shows to the Court:

1. That your petitioner is the duly appointed, qualified and acting administratrix, c.t.a. of the estate of the above named Ernest C. Lee, deceased.
2. That among the assets of the estate is a one-half interest in a partnership business operated in the District of Columbia, known as J. William Lee's Sons Company, trading as Lee Funeral Home, 302 Fourth Street, N. E., Washington, D. C.
3. That the net assets of the business (including the value of real estate used in the conduct of the said partnership business), as appraised by competent appraisers and based upon the computation of Maynard T. Ryan, C.P.A.,

the accountant employed by the partnership for many years, as of the date of death, amount to \$731,481.88 (see Exhibit A attached hereto.) Copies of the above have previously been furnished to counsel herein.

4. That said partnership business is now being conducted by the surviving partners as "winding up partners" for the purpose of termination of the partnership.

5. That the estate partnership interest is difficult, if not impossible, of division and distribution in kind by the administratrix, c.t.a.

6. That the petitioner and other heirs of this estate are desirous of receiving reasonable cash advances on their inheritances at the earliest date and the petitioner is presently without funds to make any such advance.

7. That the petitioner herein has received a bona fide offer from the surviving "winding up partners" for the purchase of the estate's interest in the above partnership at a price of \$450,000.00, with all cash payable within a reasonable settlement period, or, at the election of the heirs of the estate, one-third of the said purchase price payable upon execution of the required conveyances, one-third in six months and the final one-third at the end of the year.

8. That the petitioner has individually received a bona fide offer from the surviving "winding up partners" for the purchase of her individual one-third inherited interest in the above partnership at a price of \$150,000.00, and has elected to accept the said offer for her individual share on the terms of an all cash payment at the time of sale.

9. Based upon the appraisals and the accountant's computation of the value of the estate interest in the partnership business as set forth in Exhibit A hereto, and placing estimates on reasonable value of the interest for the use of estate assets for the period of administration and good will, it is the opinion of the petitioner herein that the above offers received are fair and reasonable and it would be to the best interest of the estate to accept such offers.

WHEREFORE, the premises considered, your petitioner prays:

1. That your petitioner be authorized to accept the offer of \$450,000.00 from the surviving "winding up partners" on the above stated terms for the purchase of the estate's interest in the partnership business known as J. William Lee's Sons Company.
2. That your petitioner be authorized to accept the offer of \$150,000.00, as set forth above, for the purchase of her individual one-third inherited interest in the partnership business known as J. William Lee's Sons Company from the surviving "winding up partners."
3. And for such other and further relief as to the Court may seem meet and proper.

/s/ Virginia Mae Lee
Petitioner

/s/ Robert A. Fields
Attorney for petitioner
614 Indiana Avenue, N. W.
Washington, D. C. 20004

[Jurat]

[Certificate of Service]

EXHIBIT "A"

**J. WILLIAM LEE'S SONS COMPANY
TRADING AS LEE'S FUNERAL HOME
BALANCE SHEET - (SEE NOTE "A")**

March 27, 1966

Assets

Cash	\$ 23,546.27
Accounts receivable	161,131.73

Inventory	10,136.14
Land and buildings	558,000.00
Furnishings, equipment and automobiles	45,813.75
Prepaid taxes	<u>1,451.32</u>
Total Assets	<u>\$800,079.21</u>

Liabilities and Net Worth

Accounts payable	\$ 65,739.18
Taxes withheld from salaries	474.65
Payroll taxes payable	<u>2,383.50</u>
Total Liabilities	68,597.33
Net Worth	<u>731,481.88</u>
Total Liabilities and Net Worth	<u>\$800,079.21</u>

Note "A" – This Exhibit is to be read only in conjunction with the accompanying transmittal letter dated November 23, 1966.

[Filed May 26, 1967]

PETITION FOR ADVANCEMENT OF FUNDS FOR SUPPORT OF MINORS

The petition of Ruby M. Lee, Mother, Custodian and Legal Guardian by appointment of the Circuit Court for Montgomery County, Maryland, in Equity No. 31,493, of Donald H. Lee and Nancy G. Lee, Minor Heirs of the Decedent, respectfully represents to the Court:

1. That Ernest C. Lee died domiciled in Washington, D. C. on March 27, 1966, leaving a Last Will and Testament, which was duly filed for probate and Letters of Administration, c.t.a. were granted to decedent's second wife, Virginia Mae Lee, on or about October 20, 1966; said Probate proceeding still is pending in this Court; and the widow has elected to repudiate her life estate

under said Will and to take her share instead pursuant to Title 19, Sec. 113, D. C. Code 1965.

2. That said estate consists of an undivided one-half interest in the active funeral home business known as J. William Lee's Sons Company, t/a Lee's Funeral Home, 300 - 4th Street, N. E., Washington, D. C., the income to this estate from which should be approximately \$50,000.00 per annum; an undivided one-half interest as tenant in common in real estate in the District of Columbia of the total appraised value of \$1,072,500.00, one-half of which amounts to \$536,250.00, most of which is rented and bearing revenue; real estate owned solely by Ernest C. Lee in the District of Columbia, Maryland and Florida of the total value of approximately \$50,000.00, of which, that located in the District of Columbia is rented and bearing revenue; and stocks, bonds and other personalty of values substantially in excess of \$150,000.00, most of which is producing dividends, interest and other revenue to the estate. The decedent left little or no indebtedness, so the only liabilities of this estate consist of taxes and administration costs which should amount to less than \$150,000.00.

3. That your petitioner married J. William Lee, II, son of said Ernest C. Lee, the decedent, on January 6, 1942; that three children were born of said marriage, namely, J. William Lee, III, now an adult, born March 20, 1943, Donald H. Lee, a minor, born October 20, 1946, and Nancy G. Lee, a minor, born September 15, 1952.

4. That said J. William Lee, II, your petitioner's husband and father of petitioner's above named children, was employed by his father, Ernest C. Lee, in said Lee Funeral Home business, throughout his adult life until the date of his death on June 24, 1958, said J. William Lee, II, was receiving compensation and other benefits from said employment amounting to approximately \$125.00 per week.

5. That on or about June 25, 1958, the day following the death of petitioner's husband, J. William Lee, II, said Ernest C. Lee, father of petitioner's

husband J. William Lee, II, and grandfather of petitioner's above named children, all of whom then were minors, proposed to and assured your petitioner that if petitioner would refrain from seeking employment in her own behalf and continue instead to devote her time to the rearing and education of her children, grandchildren of Ernest C. Lee, said Ernest C. Lee would continue paying to your petitioner out of his own share in said funeral home business an amount equal to the salary and other benefits theretofore received by petitioner's husband amounting to approximately \$125.00 per week; that in firm reliance upon said proposed means of support for her children and herself, petitioner having no other means of support for her children and herself, petitioner accepted said offer of Ernest C. Lee; that pursuant to said agreement, petitioner refrained from seeking outside employment and continued to rear and educate her children, the grandchildren of Ernest C. Lee, and Ernest C. Lee did faithfully continue paying to petitioner for the support of her children and herself the salary and other benefits amounting to approximately \$125.00 per week up to the date of death of said Ernest C. Lee on March 27, 1966; but immediately upon the death of said Ernest C. Lee on March 27, 1966, said payments and other benefits to petitioner were stopped abruptly and nothing whatsoever has been received from said source by your petitioner from said date to the present time.

6. That notwithstanding the fact that said estate is, and at all times has been well able to continue paying said maintenance and support to petitioner for petitioner and her children, and though the demand for the same often has been made, the administratrix of said estate, Virginia Mae Lee, has refused to pay the same or any part thereof, with the result that petitioner has been forced to use her meager savings, borrow from relatives and friends and seek part-time employment in order to support, educate and maintain her children and herself contrary to the aforesaid agreement between said Ernest C. Lee and your petitioner.

7. That said administratrix, Virginia Mae Lee, has failed and refused to advance any money whatsoever for the maintenance, support and education of

petitioner's two minor children, namely, Donald H. Lee and Nancy G. Lee, notwithstanding the fact that each are heirs at law in their own right to a one-ninth interest in and to the residue of said estate.

8. That the sum of \$125.00 per week is a reasonable minimum amount required by petitioner for the maintenance, support and education of her children, including the maintenance of a home for these two minor children in a manner comparable to their station in life during the lifetime of their father, J. William Lee, II, and their grandfather, Ernest C. Lee; and said estate is amply able to pay said \$125.00 per week for such maintenance, support and education of petitioner's said two minor children.

WHEREFORE, premises considered, petitioner prays:

(1) That an order be passed allowing and awarding petitioner the sum of \$125.00 per week for the maintenance, support and education of Donald H. Lee and Nancy G. Lee, minor children of petitioner, to be paid to petitioner pendente lite by the administratrix of this estate pending approval of the final account of the administratrix herein;

(2) That an order be passed awarding petitioner a sum equal to \$125.00 per week from March 27, 1966, the date of death of said Ernest C. Lee, until the date of commencement of payments pursuant to the pendente lite Order prayed for in Item No. 1 above; and

(3) For such other and further relief as to the Court may appear proper in the premises.

Respectfully submitted,

/s/ Ruby M. Lee, Petitioner

/s/ Lyle L. Robertson, Atty. for Petitioner

/s/ Jack Pinkston, Atty. for Petitioner

[Certificate of Service]

[Filed _____]

**OPPOSITION TO PETITION TO SELL ESTATE ASSETS
and
MOTION FOR SPECIFIC PERFORMANCE OF AGREEMENT
TO CONVEY INTEREST IN FUNERAL HOME**

Marion Lee Buchanan, John W. Lee, III, and Ruby M. Lee, Mother, Custodian and Legal Guardian of Donald H. Lee and Nancy G. Lee, minors, daughter and grandchildren and sole heirs at law of deceased, and with the exception of one specific legatee, represent the remaining two-thirds of the estate, the administratrix — the petitioner — having elected to take under the statute, in opposition to Petition of Virginia Mae Lee to sell Estate Assets, and for Motion for Specific Performance of agreement to convey interest in Funeral Home, respectfully state to the Court:

1. Admit paragraph 1 of petition.
2. Admit that one-half interest in the J. William Lee's Sons Company, trading as the Lee Funeral Home, is an asset of the estate and deny each and every other allegation in paragraph 2 of the petition.
3. Admit receipt of the information furnished counsel, and state that Maynard P. Ryan, CPA, over the past ten years was employed by J. William Lee's Sons Company for the purpose of rendering a strictly bookkeeping service, and deny each and every other allegation in paragraph 3 of the petition.
4. Deny each and every statement in paragraph 4 of the petition and assert that the petitioner has made no report to or sought the advise of this court regarding the continuation or discontinuation of the Lee Funeral Home business.
5. Deny each and every statement in paragraph 5 of the petition, and state that it is a conclusion.

6. Admit that they are desirous of receiving their inheritance as soon as possible, and have no information as to the other statement in paragraph 6 of the petition, therefore deny each and every other statement therein.

7. Deny each and every allegation in paragraph 7 and state that no offer is in fact before the Court.

8. Have no knowledge of any offer individually, and deny that there are any "surviving winding up partners."

9. Assert that Exhibit A attached to the petition does not reflect any amount for good will or reasonable value for use of assets, therefore deny each and every statement in paragraph 9 of the petition.

10. There is no showing of need for sale of real estate for payment of debts and legacies. The balance sheet of the funeral home as of March 27, 1966, Exhibit A, to the petition, after omitting the funeral home reveals a net worth of \$173,481.38,
one-half of which is an asset of this estate 86,740.94
added to the following list of administerable
assets as stated by the petitioner:

Cash (approximately)	9,000.00
Savings Bonds valued at	5,700.00
National Bank of Washington stock, appraised at \$152,000.00, having a current market value of	<u>137,000.00</u>
totals	<u><u>\$238,440.94</u></u>

11. The petitioner in answer to opposition to petition to sell appraised personalty and motion to set bond to cover administration expenses, debts and legacies when eventually determined in order to preserve assets or in the alternative motion to require administratrix to furnish information to enable movants to arrange financing to preserve assets states in paragraph 2 that she "now states a firm estimate of the debts, charges and expenses of the estate,"

the amount stated as Federal Estate tax liability is underestimated in the amount of \$14,387.62, and the Court and administration costs, counsel fees and commissions are overstated, the only firm amount shown being the specific bequest of \$5,000.00.

12. Arrearages in the rental income from real property at the time of death of decedent in the approximate amount of \$20,000.00 is not included in petition, nor has petitioner sought the advice of the Court in regard thereto, one-half of this sum \$10,000.00, is an asset of this estate.

13. The petitioner does not include all of the real estate in the Federal Estate Tax Return, in that the real estate upon which the funeral home is situated is included as an asset of a partnership.

It is not agreed that the funeral home business is a partnership, and as this is another matter involving the holders of the remaining undivided interest in the real estate and the funeral home it will not be further mentioned here except to point out that a Complaint for Partition of Real Property, Civil Action No. 1703-67, was filed July 5, 1967, copy of which is attached hereto. With the sale of the real property, sufficient funds will be available to pay all debts and costs, and the one specific bequest, and enable your opponents to take assets in kind. And further that your opponents are agreeable to paying any interest on Federal Inheritance Tax.

14. And for such other and further reasons as will be urged at the hearing thereon.

For their Motion for Specific Performance of Agreement to Convey Interest in Funeral Home, state:

A. On or about July 29, 1966, the petitioner, Virginia Mae Lee, entered into an agreement with your opponents to purchase her interest in the funeral home business, contingent upon her becoming administratrix and the exercise of her right to take under the statute rather than the Will.

B. In accordance with this agreement your opponents through counsel have stated that they were willing and able to purchase her interest, which she has refused and now asks the Court to approve sale of her interest in the funeral home to others. However, no written contract of sale is before the Court.

C. Your opponents therefore demand that Virginia Mae Lee sell her interest to your opponents as agreed.

/s/ Marion Lee Buchanan

/s/ John William Lee, III

Donald H. Lee, minor

Nancy G. Lee, minor

By: /s/ Ruby M. Lee, Custodian and
Legal Guardian

Opponents and Movants.

/s/ John H. Connaughton

/s/ Lyle L. Robertson
406 Southern Building
Washington, D. C. 20005

Attorneys for Opponents & Movants

[Jurat]

[Certificate of Service]

[Filed June __, 1967]

**OPPOSITION TO PETITION FOR ADVANCEMENT OF FUNDS
FOR SUPPORT OF MINORS**

Comes now Robert A. Fields, attorney for Virginia Mae Lee, administratrix, c.t.a. of the estate herein and represents to the Court as follows:

1. That the administratrix, c.t.a. herein has, since her appointment, always been willing to make advancements to all the heirs of this estate, including the minors, petitioners herein.

2. However, the first duty of the administratrix, c.t.a. is to pay or to make adequate provisions for the payment of the debts, administration expenses and taxes of the administered estate, and in view of the present financial condition of the estate as set forth below, she has been and still is unable to make any advancements to the heirs herein, as there clearly appears from the statement below a cash deficiency of over two hundred thousand dollars for the payment of debts, charges and taxes.

Court and administrative costs, counsel fees and commissions	\$ 63,700.65
Federal Estate tax liability	148,709.07
Bequest to Loretta Schwartz	<u>5,000.00</u>
Total debts, charges and expenses	\$217,409.72
Cash (approximately)	9,000.00
Savings bonds valued at	5,700.00
National Bank of Washington stock appraised at \$152,000.00, now having a current market value of	137,000.00
Winding up interest in funeral home business having market value of	<u>450,000.00</u>

Total administerable assets

\$601,700.00

Note: An interest in rental real estate in the approximate amount of \$257,250.00 is not now involved in the administration of this estate.

3. That in an effort to make some funds available to the heirs of this estate, that on May 23, 1967, the administratrix, c.t.a. authorized her attorney to write a letter to the rental agent managing an estate interest in real estate having a market value of \$257,250.00 authorizing him to distribute the accumulated and future rentals directly to the heirs herein. It is understood that pursuant to these instructions, the rental agent has forwarded petitioners herein the sum of \$360.33 each and future rental income will continue to be distributed in the proper inherited shares.

4. It is admitted that during the lifetime of the late grandfather, Ernest C. Lee, that he voluntarily made contributions from his personal funds to the minor petitioners herein and in an approximately equal amount to his adult daughter, Marion Buchanan, an heir of this estate, and that upon his death these contributions immediately stopped. Likewise, his widow, the administratrix, c.t.a. herein, has had no funds from her husband's estate since his death.

5. There is obviously no duty, legal or ethical, on the administratrix, c.t.a. to make any contribution to the support of the infant petitioners herein; and, in fact, if she were to voluntarily make such payments or advancements, she would be severely criticized and legal liability for making such payments, in view of the current insolvent status of the estate as set forth in paragraph 2, *supra*, would involve her personal liability.

WHEREFORE, the premises considered, counsel prays:

1. That the Petition for Advancement of Funds for Support of Minors herein be denied.

2. For such other and further relief as to the Court may seem meet and proper.

/s/ Robert A. Fields

* * *

[Certificate of Service]

[Filed July __, 1967]

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PETITION FOR ADVANCEMENT OF FUNDS FOR MINORS**

also

IN OPPOSITION TO SELL APPRAISED PERSONALTY

and

**MOTION TO SET BOND TO COVER ADMINISTRATION EXPENSES,
DEBTS AND LEGACIES WHEN EVENTUALLY DETERMINED
IN ORDER TO PRESERVE ASSETS**

or, in the alternative

**MOTION TO REQUIRE ADMINISTRATRIX TO FURNISH INFORMATION
TO ENABLE MOVANTS TO ARRANGE FINANCING TO PRESERVE ASSETS**

also

OPPOSITION TO PETITION TO SELL ESTATE ASSETS

and

**MOTION FOR SPECIFIC PERFORMANCE OF AGREEMENT
TO CONVEY INTEREST IN FUNERAL HOME**

1. The administratrix, in note in paragraph 2, in her opposition to petition for advancement of funds for support of minors, states that "an interest in rental real estate in the approximate amount of \$257,250.00 is not now involved in the administration of this estate." As stated below in paragraph 10, the administratrix has not reported to the Court the arrearages in rental income. Therefore, statement in the note that rental income is *not now involved* in the administration of this estate is confusing. The rental income in arrears at the time of the death of the decedent, is a debt due to the decedent, and an asset of this estate. As will be seen in paragraph 10 below the amount due this estate approximates \$10,000.00. The confusion is compounded by the statement in paragraph 3 of the administratrix' opposition, which immediately follows the note at the end of paragraph 2, that she had "*authorized* her attorney to write a letter to the rental agent managing an estate interest in real estate having a market value of \$257,250.00 authorizing him to distribute the accumulated and future rentals directly to the heirs herein" (*italics added*). It

can only be presumed therefrom that the administratrix had at one time control of rental income, otherwise it would not have required her written authority to the rental agent to distribute accumulated rentals. Having control of the rental income the question arises as to why she made no report thereof to the Court, and what is the amount of the accumulated rental.

2. Also as set out in paragraph 8 below, there are funds in excess of \$50,000.00 which the administratrix has not included as an asset to the estate.

3. In addition as pointed out in paragraph 8 below ample funds are available, and there is no reason why the advancement of funds to all the heirs cannot be made, more especially for the minors' support.

4. The estate is not insolvent and it is the duty of the administratrix to secure the advice and approval of the Court through the Office of the Register of Wills by filing complete and accurate inventory of money and debts due decedent. By so doing ample funds are available to advance funds for support of minors. Moreover, as stated in paragraph B below upon the sale of real estate pursuant to Complaint for Partition funds will be available to guarantee payment of all costs of administration, and the advancement of funds to minors should be granted as prayed in petition.

5. As to opposition to sell appraised personalty, and motion to set bond to cover administration expenses, debts and legacies when eventually determined in order to preserve assets, or in the alternative, motion to require administratrix to furnish information to enable movants to arrange financing to preserve assets, the Federal Tax Returns for the past five years were furnished upon direction of the Court on June 14, 1967. At the hearing on the above the administratrix brought her petition to sell estate assets before the Court. The administratrix by so doing has attempted to circumvent the Rules of this Court and the District of Columbia Code.

6. United States District Court Rule 43, states that the petition to sell real estate "shall designate specifically the real estate it is desired to sell," the

only reference to the real estate to be sold in the petition is in paragraph 3 in brackets "(including the value of the real estate used in the conduct of the said partnership business)." This attempt to conceal the sale of real estate outside the Rules of this Court is but mockery of the law. Rule 43(b) requires that the case be referred "to the Auditor for report as provided by Section 18-607 of the District of Columbia Code (1951)." Rule 43(b) makes it mandatory that sale of real estate be referred to the Auditor whether there is answer or consent, or proper summons by publication. The petition to sell estate assets should therefore be dismissed, and the administratrix directed to comply with the Rule.

7. Further, the facts do not support the need to sell real estate. At the date of the death of the testator the net worth of the funeral home omitting Land and Buildings, as set forth in the Balance Sheet Exhibit A to the petition:

Assets	
Cash	\$ 23,546.27
Accounts receivable	161,131.73
Inventory	10,136.14
Furnishings, equipment and automobiles	45,813.75
Prepaid taxes	<u>1,451.32</u>
	<u>\$242,079.21</u>
Liabilities and Net Worth	
Accounts payable	65,739.18
Taxes withheld from salaries	474.65
Payroll taxes prepaid	<u>2,383.50</u>
	<u>\$ 68,597.33</u>
Net Worth	<u>173,481.88</u>
	<u>\$242,079.21</u>

After deducting liabilities of \$68,597.33, leave a net worth of \$173,481.88. One-half of the net worth of \$86,740.94 being an asset of this estate. Copy

of the letter of transmittal referred to in Note "A" to Exhibit A, is attached hereto marked Exhibit 1, and prayed read as a part hereof.

8. This report, a balance sheet, reflects status of the funeral home business as of March 27, 1966, and at that time there was \$23,546.27 cash, one-half of which is an asset of this estate \$11,773.14

The accounts payable, after deducting \$21,763.04 as uncollectable (see CPA's note bottom of Exhibit A) amounted to \$161,131.73. Based upon prudent management it can be reasonably assumed that after 15 months one-half of this amount or \$80,565.86 has now been collected, one-half of which is an asset of this estate 40,282.93

The inventory amount shown on this report of \$10,136.14, which likewise after 15 months must also have been consumed, one-half of which is an asset of this estate 5,068.07

Without taking into consideration the disposition of the furniture, equipment and automobiles shown on this report in the amount of \$45,813.75, one-half of which \$22,906.87 is an asset of this estate. The liquid assets of this estate in the funeral home business amount to \$57,114.14

9. Due to neglect on the part of the administratrix in permitting others to take over and continue to operate the business, in not reporting to the Court, no monthly reports are on hand. Which would have been available to all parties had orderly procedure been followed. The failure of the petitioner to report to the Court on the continuance or discontinuance of the funeral home business and in not reporting the estate assets in the funeral home business borders on concealment and wasting of assets and constitutes grounds for removal, as set forth in 1 Mersch D. C. Probate, Section 1093, and Title 20, Sections 361 and 363 of the District of Columbia Code.

10. Rental income from real estate not an asset of the estate but arrearages on leases, at time of death is a debt due decedent and an asset of

the estate, which amounted to approximately \$20,000.00, one-half of which \$10,000.00 should be included in this estate. The petitioner has not reported this to the Court nor has she sought the advice of the Court, and should be compelled to do so forthwith.

11. The petitioner states as her firm estimate of debts, charges and expenses the item for Court and Administration Costs, Counsel fees and commissions \$63,700.45

The Federal Estate Tax Report (which is in error in the amount of \$14,387.62) includes as a deductible item under Administration expenses:

Executor's Commission at	3%
and Attorney Fees at	6%
or a total of	<u>9%</u>

9% of \$450,000.00 amounts to 40,500.00

No justification can be made to support the sale of funeral home as other assets are available to pay debts, administration costs and the one specific bequest. The amount shown on Federal Tax Report will not be needed. The Court and Administration cost and Counsel fees reduced accordingly leaving as Court and Administration Costs and Counsel fees \$23,200.45

12. The statement in paragraph 7 of the petition does not satisfy the Statute of Frauds, not being in writing, and as no document purporting to be a contract of sale is attached thereto, it merits no consideration. Moreover, as infants are involved it borders on an attempt to use the Court, in circumventing the Office of the Register of Wills and the Auditor. Who are the parties? Who holds the deposit or earnest money? Petition should be dismissed on this point alone as Title 20, Sections 1106 and 1108, District of Columbia Code is ignored.

In support of their motion for specific performance of agreement to convey interest in Funeral Home Business:

A. That on July 29, 1966, at 3210 Chestnut Street, N. W., Washington, D. C., prior to the appointment of the petitioner, Mrs. Virginia Mae Lee, a conference was had with the following persons present:

Mrs. Virginia Mae Lee
 Mrs. Marion Lee Buchanan
 Mrs. Ruby M. Lee
 Donald H. Lee - age 19
 Nancy G. Lee - age 14
 Robert A. Fields - attorney
 Jack Pinkston - attorney (now deceased)
 Lyle L. Robertson - attorney

From the date of death of Ernest C. Lee on March 27, 1966, - four months - no steps had been taken to probate the Will due to the nominated executor's demise prior to the death of the testator, and the nominated successor executor declining to serve. Under the terms of the Will, Mrs. Virginia Mae Lee, the (second) wife of the decedent took a life estate, therefore your movants had only a remainder interest. Mrs. Virginia Mae Lee had the election of taking a life estate under the Will or exercising her right to take under the statute. If Mrs. Virginia Mae Lee took under the Will your movants would acquire the one-half interest in the funeral home held by the testator, upon her death. The decedent Ernest C. Lee had planned that his children and grandchildren continue in the funeral home business. Your movants, grand-children and great grand-children of John William Lee the founder of the funeral home business, and under their father and grandfather had worked in the funeral home their entire life-time, and who had and are now educating their children to become professional morticians, are vitally interested in the continuation of the funeral home business as their livelihood. Mrs. Virginia Mae Lee well knowing that this interest was the wish of her deceased husband agreed to sell her interest in the funeral home business to your movants, upon the condition that there would be no caveat to the Will or opposition to her administering the estate, if she determined it to be more advantageous for her to take a one-third

interest under the statute. At this meeting Mrs. Virginia Mae Lee also well knew that the funeral home business was equally owned by her deceased husband on the one hand, and by children of a deceased brother of her deceased husband on the other, and repeatedly asserted that she would see to it that the interest of Ernest C. Lee, deceased would be kept for his children and grand-children, as she knew that was the way the decedent wanted it to be.

B. As stated above Complaint for Partition of Real Property, Civil Action No. 1703-67, will when concluded guarantee ample funds with which to pay petitioner for her interest in the funeral home business. Despite this agreement and with full knowledge that the sale of her interest to others, places your movants, children and grand-children of her deceased husband, in a minority position, she has asked the Court to approve sale of her interest. The petitioner, Mrs. Virginia Mae Lee, has made no investigation and report on the condition of the Lee Funeral Home business to the Court nor to the movants, and as before stated, neither has she sought the advice of the Court in regard to the rights of the minors involved.

C. Movants are entitled to have interest in funeral home of Mrs. Virginia Mae Lee conveyed to them as agreed.

It is therefore respectfully urged that the Court grant the advancement of funds for the minors, as prayed, and as a result of the action taken in Civil Action No. 1703-67 there will be ample funds to pay all debts, legacies, costs and taxes when eventually determined, all personal assets of the estate remain under the control of the Court, and that Virginia Mae Lee convey to the heirs of her deceased husband her interest in the funeral home business.

Respectfully submitted,

/s/ John H. Connaughton

/s/ Lyle L. Robertson
Attorneys for Opponents
and Movants

[Certificate of Service]

AUTHORITIES

Title 20, Sections 361 and 363, District of Columbia Code

Title 20, Section 701, District of Columbia Code

Title 20, Section 901, District of Columbia Code

Title 20, Sections 1106 and 1108, District of Columbia Code

1 Mersch, D. C. Probate, second edition, section 1093

2 Mersch, D. C. Probate, Section 1701, *et seq.*

2 Mersch, D. C. Probate, Section 1622

Brosnan v. Fox, 52 App. D. C., 143, 284 Fed. 923 (1922).

/s/ John H. Connaughton

/s/ Lyle L. Robertson
*Attorneys for Opponents
and Movants*

[Filed August 31, 1967]

REPORT OF GUARDIAN AD LITEM

The report of JAMES C. TOOMEY, Guardian ad Litem appointed by this Honorable Court on August 17, 1967 to appear for Nancy G. Lee and Donald H. Lee, minors and heirs at law and next of kin of the above named decedent, to represent said minors at the hearing on the petition of Administratrix, c.t.a. to sell estate assets, reports unto the Court as follows:

1. Ernest C. Lee, deceased, died on March 27, 1966 leaving a Last Will and Testament, which was duly admitted to probate and record by this Honorable Court. The executors nominated in said Will either predeceased the

testator or renounced. Virginia Mae Lee was appointed and qualified as Administratrix, c.t.a. of the estate of the said Ernest C. Lee, deceased. The Will left a life estate in the entire estate, except for a small specific bequest, to the said widow, Virginia Mae Lee. The widow subsequently renounced this bequest of a life estate and elected to take her statutory interest as surviving spouse. The Will further provided that at the termination of the life estate, the rest, residue and remainder of said estate should go, absolutely and in fee simple, as follows:

- (a) one-half unto the daughter of decedent, Marion Lee Buchanan;
- (b) the remaining one-half unto the issue of decedent's deceased son, William Lee, per stirpes.

The issue of said deceased son are John William Lee, III, age 24 and the two minors, Donald H. Lee and Nancy G. Lee, who are represented by this Guardian ad Litem. Therefore, the life estate left to the widow having terminated by her renunciation, the assets of the estate will pass one-half to the daughter, Marion Lee Buchanan, and one-half to the children of the deceased son, all subject to the one-third statutory interest to which the widow is entitled.

2. Included in the assets of the estate is the business known as John William Lee's Sons Co., trading as Lee's Funeral Home. This is an undertaking establishment located at 300 - 4th Street, N. E., Washington, D. C. This business was being operated immediately prior to the death of Ernest C. Lee, March 27, 1966 by the said Ernest C. Lee and Katharine J. Lee, Clarence W. Lee, John Francis Lee and Marie Lee Arnold, who are the children of Clarence W. Lee, deceased, who was a brother of Ernest C. Lee. According to information received by this Guardian ad Litem this business had been operated as a partnership between the decedent herein as 50% partner and the four aforementioned children of Clarence W. Lee as holders of a 50% interest in the partnership. This form of ownership of the business had been in existence since at least 1939. This Guardian ad Litem has seen and examined United States Partnership Income Tax returns covering the years 1962 through 1966, all of

which indicate such a partnership operation of the business. In addition there is on file in the Office of the Register of Wills of the United States District Court for the District of Columbia in Administration No. 56,727, Estate of Sarah J. Lee, deceased, a statement of facts and stipulation filed January 20, 1945. Said statement of facts and stipulation, paragraph two thereof states, "The partnership of J. Wm. Lee's Sons Co. since the death of Sarah J. Lee to and including the present time, has been and is composed of Katharine J. Lee, Clarence W. Lee, Marie Helen Lee, and John Francis Lee, each as to a one-eighth interest, and Ernest C. Lee as to a one-half interest." This statement of facts and stipulation is signed by the decedent herein, Ernest C. Lee, and the four above named children of the deceased Clarence Lee. The said Sarah J. Lee died during the year 1939. Title 41, Section 305, District of Columbia Code, supp. V, 1966, defines a partnership as "a partnership is an association of two or more persons to carry on as co-owners a business for profit." This Guardian ad Litem reports to the Court that the business concerned herein was a partnership as of the date of death of Ernest C. Lee, deceased.

3. A contract has been entered into subject to the Court's approval, said contract being between Virginia Mae Lee, Administratrix, c.t.a. of the Estate of Ernest C. Lee, deceased, as seller and the surviving partners, Katharine J. Lee, Clarence W. Lee, John Francis Lee and Marie Lee Arnold, as buyers, agreeing to the sale of the 50% partnership interest in the above described funeral home business. This contract bears date May 26, 1967 which was the date that the Administratrix, c.t.a. executed the petition to sell estate assets, the matter pending before the Court. This contract provides for the purchase of the 50% partnership interest for the amount of \$450,000.00. The contract in paragraphs numbered 1, 2, 3, and 4 breaks the aforesaid sum down as follows:

1. \$279,000.00 to be paid for the real property which is used by the funeral home in the operation of its business.

2. \$87,000.00 for 50% of the remaining assets of the dissolved partnership as shown on the balance sheet of said partnership as of date of death, March 27, 1966.

3. \$57,000.00 for the good will value in the partnership business and for the exclusive future use of the trade names of J. William Lee's Sons Company and Lee Funeral Home.

4. \$27,000.00 for use of the estate's 50% interest in the assets of the partnership from date of death. Referring to paragraph 1 in said partnership, this Guardian ad Litem following his appointment conferred with Robert W. Kidwell, Vice President of Thos. J. Owen & Son, Inc., real estate appraisers. During the year 1966, following the death of Ernest C. Lee, deceased, Mr. Kidwell conducted an appraisal of the real property which is the subject matter of the contract. He arrived at an opinion that the "present fair market value" was \$558,000.00. On August 24, 1967 Mr. Kidwell reported to this Guardian ad Litem in writing that the above mentioned appraised valuation has not changed and remains at the figure of \$558,000.00. \$279,000.00 represents 50% of said appraised value.

Referring to paragraph 2 referred to above, the balance sheet prepared by Maynard T. Ryan and Co., certified public accountants, as of March 27, 1966 shows a total net worth of the partnership business as \$731,481.88. This net worth includes the appraised valuation of the real property at \$558,000.00. Subtracting this figure from the total net worth a net worth figure excluding real property amounts to \$173,481.88. 50% of said figure amounts to \$86,740.94. The contract price for this item amounts to \$87,000.00.

Referring to paragraph 3 referred to above the offer of \$57,000.00 for good will and use of trade name of the partnership business appears to this Guardian ad Litem as fair and reasonable. To determine a fair value on good will this Guardian ad Litem conferred with Raymond H. McGivern, certified public accountant, who used another formula in arriving at the value of good

will. Mr. McGivern had access to the balance sheet of the partnership business as of March 27, 1966 and the federal partnership income tax returns of the partnership for the years 1961 through 1966. He arrives at a conclusion that the amount of \$450,000.00 for the 50% terminated interest of Ernest C. Lee, deceased, is fair and reasonable.

Referring to paragraph 4 referred to above, this Guardian ad Litem has arrived at the following conclusions. Under Title 41, Section 341, District of Columbia Code, supp. V, 1966, the estate is entitled to interest at the rate of 6% on use of partnership assets since date of death. The balance sheet of the partnership business prepared as of March 27, 1966 shows a total net worth including real property of \$731,481.88. 50% of said net worth amounts to \$365,740.94. 6% on said figure for an eighteen month period, March 27, 1966 through August 27, 1967 amounts to \$32,916.97 or \$5,916.97 more than the \$27,000.00 contained in paragraph 4 of the contract herein. This Guardian ad Litem has conferred with the attorney representing the purchasers and has been authorized to state that the purchasers will increase their offer from \$450,000.00 to \$455,916.97 to cover this addition.

5. Following his appointment this Guardian ad Litem conferred with Ruby M. Lee, mother and custodian of Donald H. Lee and Nancy G. Lee, minors herein. The said Ruby M. Lee has been appointed Guardian of the aforesaid two minors under order of the Circuit Court of Montgomery County, Maryland. Present at this conference were John W. Lee, III, brother of the aforesaid minors and adult son of Ruby M. Lee. In addition this Guardian ad Litem conferred with Marion L. Buchanan, daughter of decedent Ernest C. Lee. All of the aforesaid parties express a desire not to sell their interest in the partnership business known as J. Wm. Lee's Sons Company. John W. Lee, III, grandson of the decedent, Ernest C. Lee, has completed the educational requirements and is now serving his apprenticeship as a mortician. Within approximately one year he will be able to qualify as a mortician. This young man expresses a great desire to continue on in his grandfather's business having in the past worked for several years in the partnership business.

Likewise Marion L. Buchanan, daughter of decedent Ernest C. Lee, has a son who is presently in the military service. He also has expressed a desire to enter into the partnership business. This Guardian ad Litem is of the opinion that the Uniform Partnership law, Title 41, District of Columbia Code, supp. V, 1966, provides as follows: The present partnership was dissolved by the death of Ernest C. Lee (Section 330(4)); that the surviving partners have a right to wind up the partnership affairs (Section 336); that no person can become a member of a partnership without the consent of all the partners (Section 317(g)). In reference to the last section this Guardian ad Litem has conferred with the attorney for the surviving partners and has learned that the possibility of creating a new partnership with the above named relatives is not acceptable to his clients.

Referring to the increase in the contract price referred to above having to do with an increase in interest to be paid for use of partnership assets which belonged to the estate herein, this Guardian ad Litem's attention was directed by the attorney for the purchasers to the next to last paragraph contained in the contract on Page 4 thereof. This paragraph provides that the contract may be terminated at the option of the purchasers if it is not approved by the Court and consummated on or before September 15, 1967.

5. This Guardian ad Litem as a result of his investigation, interviews, examination of pleadings in this case, study of the pertinent law, conferences with experts in valuation of the real property and with a certified public accountant is of the opinion that it would be of the best interest of the minors Donald H. Lee and Nancy G. Lee to sell the assets of the partnership business, J. Wm. Lee's Sons Company, which belonged to the estate of Ernest C. Lee, deceased.

/s/ JAMES C. TOOMEY
Guardian Ad Litem

[Jurat]

[Certificate of Service]

[Filed December 8, 1967]

* * *

OFFICIAL TRANSCRIPT

* * *

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

August 31, 1967

26

* * *

THE COURT: Assume that you did this for them, Mr. Robertson, the point is that this matter has been dragging on for weeks. The Court sees no better offer made. The Court has to be practical in these matters. Suppose they have been working for weeks. Of course, if a better offer was here, then it would be accepted. I am sure that the administratrix would welcome it. However, none has been forthcoming. It is all very easy to say, "Well, this business is worth such and such an amount." Then let somebody pay that much for it.

MR. ROBERTSON: I wish I could tell Your Honor more, but —

THE COURT: The Court gets your point.

MR. ROBERTSON: Would Your Honor permit me to comment briefly on this contract? I would like to invite the Court's attention particularly to paragraph three on the bottom of page 2 and the top of page 3 of the contract, whereby they asked for the exclusive future use of the trade name, "J. William Lee's Sons Co.," the Lee Funeral Home within the District of Columbia, and within twenty-five miles of the District of Columbia, for the sum of \$57,000.00.

27 Now, I submit, Your Honor, that this is a partnership, and when Mr. Ernest Lee died, then the partnership died with him. Now, his sons or grandsons in here are in no way obligated — they can continue in any

manner they want to. That is something in here — they were not a part of the contract. I think that part of the contract should be stricken.

THE COURT: The Court has before it an application to approve a proposed sale of an asset of the Estate of Ernest C. Lee, deceased. The asset in question is a one-half interest in the so-called Lee Funeral Home, a funeral establishment in the District of Columbia.

The funeral home was owned by a partnership, of which the deceased had a half interest. Under the law, his death dissolved the partnership.

The surviving widow, the administratrix, desires to sell a half interest, and has an opportunity to sell it to the surviving partners who own the other half interest. They have offered \$450,000.00 for the half interest.

It is necessary to raise a considerable amount of cash for the estate immediately in order to pay the federal estate taxes, which are carrying interest at the rate of thirty dollars a day.

- 28 In view of the fact that some of the parties in interest were minors, the Court appointed a guardian ad litem to represent them. The guardian ad litem made a very thorough investigation. An appraisal has been procured. In addition to that, he procured a report of a certified public accountant.

It is established as a result of the very thorough, enlightened investigation made by the guardian ad litem that the proposed sale is for the best interests of the estate, and that the amount proposed to be paid is fair and reasonable.

As a result of the investigation of the guardian ad litem and the efforts made by him, the proposed price has been increased by \$5,900.00.

No other offer is before the Court.

Counsel for certain next of kin are opposed to the sale, and request that they be given time to try to work out a situation resulting in a possible better offer on their part. They have had many weeks to do so. There is no assurance that they will be able to come forward with a better offer.

The estate is losing money at the rate of thirty dollars a day in interest on federal estate taxes. The proposed price is obviously fair as a result of the opinions and studies procured, not only by the counsel for the administratrix who desires to make the sale, but also by the guardian ad litem whose investigation, as has been said, has been very thorough. Under the circumstances, the Court is of the opinion that it is for the best interests of the estate that the sale be consummated at the earliest possible date, and the sale will be confirmed.

MR. TOOMEY: Thank you, Your Honor.

MR. FIELDS: May I present an order, Your Honor?

THE COURT: You may show it to other counsel.

(the document was shown to other counsel.)

MR. FIELDS: Your Honor, I might state that this contract is for the agreed sum, almost \$457,000.00.

THE COURT: Very well.

MR. FIELDS: I might also say that the purchasers will pay all costs of transfer. This is a net figure to the estate.

THE COURT: I so understood. Is the form of the order agreeable to all parties?

MR. ROBERTSON: With the explanation that the conveyance costs will be borne by the purchasers.

THE COURT: My question to you is whether the form of the order is acceptable?

MR. ROBERTSON: Yes, Your Honor.

THE COURT: Very well. The fifty-nine hundred and some dollars is to be added to the \$450,000.00?

MR. FIELDS: That's right, Your Honor.

MR. TOOMEY: That's been added to it, Your Honor.

THE COURT: Very well. The Clerk calls my attention to another petition here, a petition for advancement of funds for support of minors.

MR. FIELDS: Your Honor, if I might make a representation to the Court, which I feel might well be satisfactory to opposing counsel.

The proceeds of this particular sale of \$450,000.00 will leave a sum of well in excess of \$150,000.00 above the ordinary costs of administration in the hands of the administratrix.

It is my intention, immediately upon these funds becoming available, to make a substantial advance to each of the three minors, maybe \$30,000.00 or \$40,000.00. There's no use letting the administratrix sit on this in a bank account. If this would be agreeable to opposing counsel —

MR. ROBERTSON: That is my motion, Your Honor, and if it will clear the record, I will withdraw it without prejudice.

THE COURT: Very well. The motion is withdrawn.

MR. FIELDS: Your Honor, may I be heard on one very minor matter.

31 Your Honor will recall that at the last hearing, I had another motion for authority to sell assets, namely, bank stocks —

THE COURT: I understood that you were not pressing that motion.

MR. FIELDS: Yes, Your Honor. As I told you at the time I would not press that. However, parts of that motion included authority to sell two other minor — relatively minor assets, namely, two coupon war bonds, thousand dollar government bonds, plus a small quantity of jewelry.

THE COURT: I think that should go through the Register of Wills.

MR. FIELDS: Your Honor, I had an order in short form, which I thought would be —

THE COURT: Very well.

MR. FIELDS: Your Honor, might I withdraw that order? I forwarded to Your Honor the wrong order.

THE COURT: I see.

MR. FIELDS: My apologies, Your Honor. That was the one prior. These are three relatively minor assets, Your Honor, that the administratrix needs a court order to dispose of, Your Honor.

THE COURT: Very well.

32 MR. FIELDS: Thank you very much, Your Honor.

MR. TOOMEY: Thank you, Your Honor.

THE COURT: Thank you, gentlemen.

(Whereupon, at 2:39 p.m., the hearing was concluded.)

* * *

[Filed August 31, 1967]

ORDER AUTHORIZING SALE OF ESTATE ASSETS

Upon consideration of the petition of Virginia Mae Lee, Administratrix, c.t.a., filed herein for authority to sell estate assets of the estate of Ernest C. Lee, deceased, for the purpose of obtaining sufficient cash to discharge estate tax obligations, and upon consideration of the report and recommendation of James C. Toomey, Guardian ad Litem for Donald H. Lee and Nancy G. Lee, minor heirs of the said decedent, and upon consideration of the offer of Clarence W. Lee, Katharine J. Lee, Marie Lee Arnold and John Francis Lee to purchase the partnership interest of Ernest C. Lee, deceased, as more fully appears in the said offer, and it appearing to the satisfaction of the Court

that the best interests of the estate of the said Ernest C. Lee, deceased, and of Donald H. Lee and Nancy G. Lee, minor grandchildren of said decedent, would be served by accepting the offer to purchase the said partnership interest by Clarence W. Lee, Katharine J. Lee, Marie Lee Arnold and John Francis Lee, it is by the Court this 31st day of August, 1967,

ORDERED, that Virginia Mae Lee, Administratrix, c.t.a., of the Estate of Ernest C. Lee, deceased, be and she hereby is authorized to accept the offer of Clarence W. Lee, Katharine J. Lee, Marie Lee Arnold and John Francis Lee to purchase the partnership interest of the said Ernest C. Lee, deceased, for the sum of Four Hundred Fifty-five Thousand Nine Hundred Sixteen Dollars Ninety-seven cents (\$455,916.97) cash, and she hereby is authorized to do all things necessary to transfer the said interest to the purchasers upon their payment of the purchase price in full, in cash, in accordance with the terms of the contract made and entered into as of the 26th day of May, 1967, by and between Clarence W. Lee, Katharine J. Lee, Marie Lee Arnold and John Francis Lee, except that the consideration set out in said contract shall be increased by Five Thousand Nine Hundred Sixteen Dollars Ninety-seven Cents (\$5,916.97), which authority shall include the right and power to convey by proper deed the interest of the decedent in partnership real estate.

/s/ Alexander Holtzoff
Judge

[Received October 26, 1967]

ROBERT A. FIELDS
ATTORNEY AT LAW
614 Indiana Avenue, N. W.
Washington, D. C. 20004

STerling 3-4142
STerling 3-5444

October 24, 1967

Lyle L. Robertson, Esquire
408 Southern Building
Washington, D. C. 20005

Re: Ernest C. Lee Estate

Dear Mr. Robertson:

Enclosed herewith are copies of the amended Federal Estate Tax and D. C. Inheritance Tax returns* for the subject estate for your information and retention.

The first annual account is being prepared at this time, a copy of which will be furnished to you upon filing. Upon its approval, it is my intention to petition the Court to distribute the National Bank of Washington stock in kind as no useful purpose is being served by these certificates remaining in my safe.

It was my earnest hope that this estate could be settled and closed prior to the end of this calendar year, but I have just been advised that it is unlikely that the Federal Estate Tax and the Fiduciary Return can be audited and passed by December 31st. For this reason, it appears necessary at the present time to hold this estate open until the spring of 1968.

With further reference to the pending partition suits mentioned in my immediately previous letter, the receipt of your amended petition is acknowledged and prior to my preparation of a responsive pleading thereto, I feel that the conference mentioned in that letter, among ourselves should be held so that other solutions to this problem might be explored by us jointly.

Sincerely yours,

/s/ Robert A. Fields

RAF:eh
encl.

* Not included.

FIRST ACCOUNT OF VIRGINIA MAE LEE.
ADMINISTRATRIX, C.T.A.

United States District Court for the District of Columbia

HOLDING PROBATE COURT

ESTATE OF

ERNEST C. LEE

Deceased

Administration No. 117,279

Debit

Date of death March 27, 1966

FIRST ACCOUNT OF Virginia Mae Lee, Administratrix, c. t. a.

PERIOD REPORTED	October 20, 1966	AMOUNT RECEIVED	REMARKS
<u>INCOME</u>			
Cash transferred from checking account— National Bank of Washington		2,863	16
American currency		15	50
Jewelry		64	50
100 shares Technical Service, Inc. stock - appr. 1-5/8		162	50
1653 shares National Bank of Washington - appr. 92		152,076	00
National Bank of Washington stock dividends			
4/1/66 826.50			
7/10/66 826.50			
10/3/66 826.50			
1/3/67 826.50			
4/14/67 826.50			
7/10/67 826.50			
10/3/67 826.50		5,785	50
Received from sale of 3/4 stock right N. B. W.		75	00
Received refund Providence Hospital		12	60
Received refund Prudential Insurance Company		45	00
Received refund insurance premium payment		1	30
Received for bond redemption		3,162	84
Received sale of U. S. Government bonds		3,324	85
Received from sale of interest in funeral home business per court order		455,916	97
Amounts carried forward,		623,905	72

		ASSETS RECEIVED		DISBURSEMENTS	
Brought forward,		623,505	72		
<u>Disbursements</u>					
Joseph H. Robinson - bond premium				528	0
Register of Wills, D. C. - court costs				45	1
Virginia Mae Lee - widow's allowance				500	0
Evening Star Newspaper Co. - publication				47	7
Washington Law Reporter Company - publication				28	8
Lyle L. Robertson, Esquire - guardian ad litem fee				1,500	0
Robert A. Fields, Esquire - partial attorney fee				1,000	0
Hammaker Bros. - monument				772	5
Thomas J. Owen & Sons, Inc. - 1/2 appraisal fee				1,500	0
Internal Revenue Service - 1966 Fiduciary Return				1,525	4
D. C. Treasurer - 1966 Fiduciary Return				237	2
Virginia Mae Lee - reimbursement for expenses of Florida property					
Real estate taxes		429.07			
expenses per account		487.58		916	6
Doyle W. Spencer - for transcript				17	4
Bank service charges				2	0
Amount carried forward,		623,505	72	8,620	60

		ASSETS		LIABILITIES
Receipt Forward		623,305	72	8,630
Balance Held for future accounting:				
American currency	15.50			
Jewelry	64.50			
100 sh. Tech. Service Inc.	162.50			
1,453 sh. N.B.W. stock	122,076.00			
Cash on deposit N.B.W.	462,365.62			
TOTALS		623,305	72	623,305

District of Columbia, to wit:

We, the undersigned, Virginia Mae Lee SWP
 I, Administratrix, S. I. S.

of the estate of Ernest C. Lee
 late of the District of Columbia Decedent

do solemnly swear that the foregoing account is just and true, and that I have been
 fully paid, or secured to be paid, the several sums for which I claim credit and
 allowances.

Virginia Mae Lee

Sworn to and subscribed before me this 3rd day of December, A. D. 1967

Alice Elizabeth Haselton
 Register of Wills for the District of Columbia,
 Notary Public, D.C. Clerk of the Probate Court

My Commission Expires March 21, 1969

514,685

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT
 OF COLUMBIA

Holding a Probate Court

On this _____ day of _____, A. D. 19____

the foregoing account, being now presented for approval, the same is, after examination by the
 Court, approved and passed.

Judge

[Filed January 30, 1968]

OBJECTION TO FIRST ACCOUNT OF ADMINISTRATRIX, C.T.A.

Mrs. Marion Lee Buchanan, John William Lee, III, Donald H. Lee, adult daughter and grandsons of the decedent, and Mrs. Ruby M. Lee, Mother and Legal Guardian of Nancy G. Lee, Minor, daughter-in-law and grand-daughter of decedent, representing two-thirds interest in the estate, by their attorney, Lyle L. Robertson, for exception to the First Account of Virginia Mae Lee, Administratrix, c.t.a., filed herein November 7, 1967, and for cause why the partial attorney fee of \$1,000.00 should not be allowed, respectfully states to the Court.

1. Disbursements in the amount of \$916.65 to herself on Florida property, not a part of the estate, is irregular and she should be required to replace such funds together with interest forthwith.

2. Disbursement to the attorney as partial attorney fee in the amount of \$1,000.00 is contrary to the interpretation of Title 20, Section 605, District of Columbia Code, as held in *Brosnan v. Fox* (1923), 284 F. 923, 52 App. D. C. 143; as modified by *Doherty v. Stoner* (1948), 169 F.2d 965, 83 U. S. App. D. C. 365. Counsel for your exceptants has not been apprised of any memorandum in compliance with the practice of the Office of Register of Wills, as set forth in 1 Mersch Probate 401. In this connection the legal guardian for the minors petitioned the Court for an advancement of funds to support of minors (there were two minors at the commencement of administration, one of which has now attained his majority) which was opposed by the administratrix. In fact, in her opposition to petition for advancement of funds for support of minors, in the file in this cause, paragraph 5 thereof reads as follows:

"There is obviously no duty, legal or ethical, on the administratrix, c.t.a. to make any contribution to the support of the infant petitioners herein; and, in fact, if she were to

voluntarily make such payments or advancements, she would be severely criticized and legal liability for making such payments, in view of the current insolvent status of the estate as set forth in paragraph 2, *supra*, would involve her personal liability."

It is respectfully submitted that the administratrix by advancing funds to herself for expenses on the Florida property and the payment to the attorney of the sum of \$1,000.00 that neither the administratrix or the attorney have acted in good faith, but have subordinated the interest of the estate to their own personal financial advantage while denying the minors support upon the grounds of allegedly high legal or ethical standards. Such action by the administratrix and the attorney constitute grounds for her removal as administratrix.

3. The administratrix has not included in the account an asset of approximately \$10,000.00 representing arrearages in rent due at the time of the death of the decedent. Repeated requests to the attorney for the administratrix in regard thereto have been met with the statement that it was his opinion that it was of questionable value. Your exceptants are informed that notes have been given for this amount, and hereby request that they be reported to the Court. Especially since these notes are in the hands of strangers to the estate. The administratrix should be required to include this item as an asset to the estate.

4. The Court's attention is invited to the fact that although there is no showing in the account that the funeral expenses have been paid, your exceptants from personal knowledge know that there were few if any debts. The principal items being taxes. Among the assets in the hands of the administratrix are 1,653 shares of Capital Stock of the National Bank of Washington, which your exceptants after strenuous effort and over the objection of the administratrix have preserved in order that they might be taken in kind. They are shown in the account at the value of \$152,076.00. Part of the cash assets

consisting of the sum of \$455,916.97 represents the proceeds from the sale of the funeral home. Your exceptants prior to November 3, 1967, the date of this First account received a distribution of \$100,000.00 representing their two-thirds interest, the other third of \$50,000.00 paid by the administratrix to herself made a total distribution of \$150,000.00. The Federal Inheritance Tax paid prior to the date of this account amounted to \$142,494.58. Using round figures and excluding the other cash assets of the estate, the proceeds from the sale of the funeral home amounting to \$450,000.00 less distribution of \$150,000.00 less Federal Inheritance Tax of \$145,000.00 less one specific bequest of \$5,000.00, totaling \$300,000.00 leaves a balance of \$150,000.00. There is no reason for holding this sum in view of the fact that there are but few debts as before stated. Additional distribution under the Court's approval should be made, including the bank stock.

5. The Administratrix through her attorney has treated the assets of the estate as her own personal property. Funds have been carelessly handled, checks have been issued to minors when she well knew that one was now an adult. She has received and kept funds not a part of the estate, and only after this account was filed, were these funds turned over to the proper parties.

6. The account does not reflect the correct status of the estate, does not report any distribution and is incomplete.

Your exceptants therefore request that the Administratrix be removed, or in the alternative that she be required to report to the Court for approval a prudent partial distribution, including the bank stock, and submit an accurate and complete account forthwith.

Respectfully submitted,

/s/ Lyle L. Robertson
Attorney for Exceptants

[Certificate of Service]

[Filed January 30, 1968]

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
OBJECTION TO FIRST ACCOUNT OF ADMINISTRATRIX, C.T.A.**

1. The administratrix in answer to objection to her first account admits that the sum of \$916.65 was disbursed to herself in reimbursement of prepaid taxes and maintenance of the family home in Clearwater, Florida. Further that this family home is an asset of the subject estate. The property is an asset of this estate, but it is not an asset administerable in this proceeding. It is so well recognized that this Court has no jurisdiction of real property outside of the District of Columbia that no authorities need be cited. This estate also has an asset real property in Calvert County, Maryland, and likewise a family home, taxes thereon have not been paid since the decedent's death, however your objectants have paid maintenance expense thereon. The disbursement to herself for the expense on the Florida property, while ignoring the taxes and expenses on the Maryland property demonstrates one instance of the high handedness in which she has handled the affairs of this estate. She did not seek the advice of the Court before paying herself for the obvious reason that had she done so she would have had to show that her interest in the estate in the District of Columbia is less than her interest in the Florida property. Therefore, your objectants will be required to pay more than their pro-rata share of the taxes and expense on the Florida property if this account as submitted is approved by the Court. Your objectants urged the administratrix to lease the Florida property, and in fact sent a party to her who wanted to rent it with the possibility of purchase. The administratrix cavalierly informed this party that the property was not for rent.

By admission funds were irregularly disbursed, and by her answer she has not forthrightly presented the facts manifesting personal advantage to that of the estate. Your objectants submit that this warrants her removal.

2. The administratrix, in paragraph 2 of her answer, states that she made a small advance (\$1,000.00) on an attorney fee *at the same time* she disbursed

by order of this Court the sum of \$1,500.00 to Lyle L. Robertson, the then guardian ad litem. In the last part of the paragraph she states that the advance attorney fee was disbursed in December, 1966. The guardian ad litem fee was not paid until March, 1967. The administratrix manifests in no uncertain manner her unfitness to serve as a fiduciary. The carelessness of the truth is nothing less than an attempt to use the Court.

The decedent left as heirs, among others, two minors of a predeceased son. When this son died leaving three minor children, decedent told his widow (daughter-in-law) that if she would stay home and rear his grandchildren, he would see that she received his son's (her deceased husband's) share of the business. The decedent, until his death, did make payment to his deceased son's widow until the time of his death. This widow, the legal guardian, and one of your objectants, at decedent's death was cut off and left with no source of income, and despite repeated requests to make some arrangements for funds for the minors, nothing was done. Therefore, motion for support of minors was filed on May 26, 1967, which the administratrix vigorously opposed. Six months prior thereto, in December, 1966, she had paid her attorney \$1,000.00. Insofar as your objectants are able to determine this is the first disbursement made. The administratrix by admission has violated her trust. In fact by talking out of both sides of her mouth in her answer in paragraph 2 does not know what she is doing, or had a reckless disregard of the duties of a fiduciary. The guardian of the minors (now only one) has exhausted her life savings, and been forced to borrow funds to support herself and her minor children. The administratrix' assertion in paragraph 2 of her answer, wherein she states that the petition for advancement of funds for minors was objected to because it was improper as such payment could not be authorized until adequate provision for the payment of federal and local estate and inheritance taxes were made by the fiduciary. It was administratrix' position that funds to support minors filed on May 25, 1967, was improper, now it develops that one week after this date on June 2, 1967, she reimbursed herself for expenses on the Florida property, and six months prior thereto had paid \$1,000.00 as

an advancement for attorney fee. Such actions scream to the high heavens with their total disregard for the interest of the minors, the estate, the law, and the rules of the Court.

By her actions she leaves the Court no alternative to her removal as administratrix.

The commission of an executor or administratrix are statutory and set forth in Title 20, Section 1705, D. C. Code, and incorporated in Rule 47 of this Court.

Title 20, Section 1705, D. C. Code:

"(5) the commissions of the executor or administrator, which shall be, at the discretion of the court, not under one per centum nor exceeding ten per centum on the amount of the inventories, excluding what is lost or has perished; and

(6) the allowance to the executor or administrator for his costs, attorney fees, and extraordinary expenses which the court considers proper to allow."

Rule 47, U. S. District Court Rules:

"Claims for attorneys' fees and commissions to fiduciaries shall be made and allowed in accordance with the provisions of Sections 20-605 and 21-126 of the District of Columbia Code (1951)."

Black's Law Dictionary, 4th edition, defines Commission:

"A compensation to an administrator for the faithful discharge of his duties."

"Public policy requires a strict interpretation of this section in order that unwarranted complications may

not arise, embarrassing to the Court, conducive to misconduct on the part of the trustee and negligence in the care of the estate. Citing *Brosnan v. Fox* (1922), 52 app. D. C. 143, 284 F. 923." 10 DCCE, page 335.

"TIME FOR PAYMENT. An executor, prior to final settlement of the estate or termination of his services in connection with the estate, is not entitled to an allowance of commissions under this section. It follows that an executor should not make payments to himself on account of commissions until he has been authorized by the court to do so. But this rule is a principle of safety and caution in the payment of executors and not a statutory rule, and it should be applied in such a way as to unnecessary hardship. Therefore, in an appropriate case, the court in its discretion may allow advance payment of all or part of an executor's commission." 10 DCCE 20-1705 5 page 340.

The payment of attorney fees under Title 20, Section 1705, D. C. Code, are an allowance to the executor which the court in its discretion considers proper. The payment to the attorney for services to the administratrix is a part of the administratrix' commission. The statute provides that the commission at the discretion of the court shall be not under one percent or exceed ten percent, and costs, attorney fees, and extraordinary expenses which the court considers proper. The attorney fees provided for in the statute are for services of an attorney to prosecute or defend claims against the estate, and not for advise of her ministerial duties. That the administratrix and her attorney both violated their trust is evidenced from the fact that she paid her attorney \$1,000.00 within six weeks after she qualified.

Brosnan v. Fox (1922), 52 U. S. App. D. C. 143, 284 Fed. 923, as modified by *Doherty v. Stoner* (1948), 85 U. S. App. D. C. 365, 169 F.2d 965, are directly related hereto and constitute well settled law in this jurisdiction.

3. Administratrix' answer in paragraph 3 asserts that by agreement of counsel for all parties the indebtedness of \$10,000.00 representing arrearages due decedent from rental properties was settled. Counsel for your objectants succeeded Jack Pinkston (deceased) from personal knowledge knows that the late Jack Pinkston made no such agreement, nor has present counsel for objectants. Your objectants and their present counsel have repeatedly requested information on this debt, and have been repeatedly ignored. The administratrix states that this debt was an indebtedness to the former partner of the funeral home business. The administratrix well knows that the real estate upon which the debt for arrearages from rent is due decedent is not a partnership asset, and as that matter has been settled by the court it will not be further mentioned. This attempt by the administratrix to force her will upon the estate under the pretext that it was agreed upon by counsel is ample basis for her removal as administratrix.

"A debt is property and an asset of the estate. Generally, debt owed to estate of deceased person can only be collected by administrator or executor of estate." Nunally v. Wilder (1964), 117 U. S. App. D. C. 377, 330 Fed. 2 843.

Here again, the administratrix is using double talk when comparison is made with her position on the Florida property, and her statement at top of page 3 in her answer:

"* * * noted that this real estate transaction has not as yet been consummated and it is not an administerable asset * * *."

Your objectants are entitled to have the court determine the value of this asset, if any, and submit that nothing in the law or the rules of the court provide for the summary dismissal of a debt upon the *belief* of counsel.

4. U. S. District Court Rule 28(d) states:

"ACCOUNT: DISTRIBUTION OF PROCEEDS. Promptly after the settlement of a private or public sale made under this rule a full and detailed account shall be filed and presented to the Court and the proceeds distributed as the Court may direct."

U. S. District Court Rule 43(c):

"MANNER OF PROCEEDING. All real estate, or any interest in land sold at public sale under order of Court shall be sold in the manner provided in Rule 28 of these Rules, and all real estate or any interest in land sold at private sale under order of the Court shall be sold in like manner as provided in paragraph (c) of said Rule."

Title 20, Section 1108, D. C. Code, reads in pertinent part:

"* * * Any surplus of the proceeds of the sale, after payment of debts and legacies and costs of administration, is deemed real estate, and shall be distributed among the heirs or devisees as their interests may appear."

The funeral home property and business ordered sold by Court Order of August 31, 1967, included (\$279,000.00) for real estate, more than half of the total sale price of \$450,000.00.

The administratrix admits in her answer that she holds \$150,000.00 in cash after paying taxes, and distributing \$150,000.00 thus ignoring the above quoted law and Rules of this Court. The only debt of the decedent, except administration costs, and a few minor items, was for taxes. The \$150,000.00 held by the administratrix since October 20, 1967, to January 31, 1968, at six percent interest approximates \$1,545.00, or in excess of \$15.00 a day interest.

The action of the administratrix in holding this enormous sum, as well as the 1,653 shares of bank stock value at \$152,076.00 by any rule of reason,

demonstrates that she is incapable of administering this estate and should be removed forthwith.

5. Your objectants respectfully submit that the answer of the administratrix as pointed out above admits that she has acted not under the law or the Court Rules, but upon pure caprice.

Furthermore, the administratrix in her opposition to the guardian petition for advancement of funds for support of minors, filed May 26, 1967, in paragraph 3, stated:

"3. That in an effort to make some funds available to the heirs of this estate, that on May 23, 1967, the administratrix, c.t.a. authorized her attorney to write a letter to the rental agent managing an estate interest in real estate having a market value of \$257,350.00 authorizing him to distribute the accumulated and future rentals directly to the heirs herein. It is understood that pursuant to these instructions, the rental agent has forwarded petitioners herein the sum of \$360.33 each and future rental income will continue to be distributed in the proper inherited shares."

Not until November 16, 1967, did the administratrix forward to the guardian of the minors, rent held in error in the estate account. After she had authorized her attorney to write a letter to the rental agent on May 26, 1967 (as above indicated), over five (5) months later rental funds held by her were paid to the guardian and other objectants. This inattention to her duties is the epitome of carelessness and neglect. It is more than that, by the fact that rent on real estate is not a part of the estate.

The treatment of the assets of this estate as if they were her own is born out by the carelessness in which checks were issued, and the fact that it was her duty to know who were minors. In addition thereto check was issued to

one of your objectants which was deposited and payment was refused for the reason that one of the two persons required to sign the check, carelessly neglected to do so. Payment on this check could not be had for over a week's time with resultant loss of interest, and additional costs assessed when payment was refused.

Your objectants in view of the admitted actions of the administratrix are justifiably apprehensive over the neglect and unlawful manner in which the estate has been handled.

Accordingly, as they comprise two-thirds interest in the estate, they respectfully request that the administratrix be removed forthwith.

Respectfully submitted,

/s/ Lyle L. Robertson
Attorney for Objectants

[Certificate of Service]

POINTS AND AUTHORITIES

Law

D. C. Code, Title 20, Section 1108

D. C. Code, Title 20, Section 1705

Rules of Court

Rule 28(d)

Rule 43(c)

Rule 47

Cases Cited

Brosnan v. Fox (1922)
52 U. S. App. D. C. 143, 284 F.2d 923
Doherty v. Stoner (1948)
85 U. S. App. D. C. 365, 169 F.2d 965
Nunally v. Wilder (1964)
117 U. S. App. D. C. 377, 330 F.2d 843

Authorities

Black's Law Dictionary
10 DCCE 335
10 DCCE 340

/s/ Lyle L. Robertson
Attorney for Objectants

[Filed February __, 1968]

ORDER

In consideration of the first annual account of the administratrix, c.t.a. filed herein, the objections filed herein and answer to the objections filed thereto, and the statements by counsel in open court, it is this 7th day of February, 1968,

ORDERED:

1. That the first annual account of Virginia Mae Lee, administratrix, c.t.a. be referred to the Office of the Register of Wills for examination, and that a report on said examination be made to this Court.
2. That a copy of the Register of Wills' report be furnished to counsel of record herein for the parties herein.

/s/ JUDGE McGUIRE

[Filed February __, 1968]

Form No. 139

NOTICE.—This slip must be filed with the papers in the case.

OFFICE OF REGISTER OF WILLS
CLERK OF THE PROBATE COURT
Washington, D. C.

February 8, 1968

No. 117,279

Estate of Ernest C. Lee (Deceased)

MEMORANDUM TO JUDGE McGUIRE

Attached are recommendations made pursuant to court order signed by you February 7, 1968 with respect to the above captioned estate.

Also attached is letter from Lyle L. Robertson, Esq., dated February 8, 1968, received today requesting a formal hearing on the matter, which I feel is completely unnecessary.

/s/ Peter J. McLaughlin
Register of Wills

LAW OFFICES
ROBERTSON, GRAY & MacCUTCHEON
SOUTHERN BUILDING
WASHINGTON, D. C. 20005

LYLE L. ROBERTSON
NORMAN A. GRAY (1961)
ROBERT L. MacCUTCHEON

PHONE 737-2962

February 8, 1968

Hon. Peter J. McLaughlin
Register of Wills
U. S. District Court for
The District of Columbia
Washington, D. C.

Re: First Account
Estate of Ernest C. Lee,
deceased, Adm. No. 117,279.

Dear Mr. McLaughlin:

The daughter, two grandchildren, and the guardian of a minor grandchild, having a two-thirds interest in the above-referenced estate, hereinafter termed the objectants, by their attorney respectfully invite your attention to the improper and negligent manner in which this estate has been administered.

Objections filed to the First Account have been answered and, by admission, two irregular and improper payment of funds have been made, one payment made by administratrix, c.t.a., to herself, one by her to her attorney. After your objectants filed a memorandum of points and authorities in support of their objections, the administratrix, c.t.a., has, by letter to your office dated February 2, 1968, indicated that she has redeposited in the estate account \$916.65, the sum she paid to herself on June 2, 1967. The admission of this improper act and the restitution of the funds can not erase the violation of her trust. The improper payment of the attorney fee is even a more open and brazen violation of her trust. At the time of the writing of this letter no notice has been received by your objectants that the improper payment to the attorney has been redeposited.

These two admittedly improper acts by the administratrix, c.t.a., in view of her opposition to an advancement of funds for support of the minors involved have justifiably incensed your objectants, who demand that she be removed.

Your objectants charge that the administratrix, c.t.a., is openly ignoring the Rules of this Court:

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Rule 28(d):

"(d) ACCOUNT: DISTRIBUTION OF PROCEEDS.

Promptly after the settlement of a private or public sale made under this rule a full and detailed account *shall* be filed and presented to the Court and the proceeds distributed as the Court may direct." (Italics added)

The funeral home was sold by order of Court. No detailed account has been filed. Your objectants have the right to insist that the administratrix, c.t.a., follow the law and rules of the Court. As a result of objections filed and at the hearing before the Court on February 7, 1968, your objectants learned for the first time that funds representing surplus from the sale of the funeral home were invested. It is not the duty of the administratrix, c.t.a., to invest funds. The first account of the administratrix, c.t.a., was executed under oath on November 3, 1967. The administratrix, c.t.a., in her answer to objection states in paragraph 4:

"Counsel herein believes that the first annual account properly represents the *status of the estate as of October 20, 1967, * * * **" (Italics added)

By letters from the administratrix, c.t.a., dated prior thereto (November 3, 1967) your objectants received \$100,000.00.

The administratrix, c.t.a., states her account on November 3, 1967, then in January, 1968, states it was as of October 20, 1967. Your objectants submit that in view thereof, the first account is incomplete, does not reflect the correct status of the estate; therefore, is confusing and worthless, and she should be directed to file a correct account forthwith.

Your objectants further point out that there was a debt of approximately \$10,000.00 due decedent for arrearages in rent. This is not reflected in the account, and your objectants have the right to have a determination of the Court as to this asset.

Your objectants point out that excluding taxes, decedent left a minimum of debts. The withholding of in excess of \$152,000.00 of bank stock, in addition to \$150,000.00, the approximate amount of surplus proceeds from the sale of the funeral home, is without reason, as well as being improper as above stated.

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For these and other reasons including negligence in issuing checks, causing loss of interest and time, a formal hearing is requested, in order that record be made and notice to the bonding company perfected.

Respectfully yours,

/s/ Lyle L. Robertson
Attorney for Objectants

cc: Robert A. Fields
Copy mailed postage prepaid
February 8, 1968.

Office of Register of Wills and Clerk of the Probate Court

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Washington, D.C. 20001

PETER J. McLAUGHLIN
REGISTER AND CLERK

February 8, 1968

Re: Estate of Ernest C. Lee,
Dec'd., Adm. #117,279MEMORANDUM TO JUDGE MATTHEW F. MCGUIREFACTS

The first account was filed by Marion Lee Buchanan, widow of decedent and Administratrix c.t.a. of the above captioned estate on November 7, 1967. On December 4, 1967 objections to said account were filed by Lyle L. Robertson, Esquire, attorney for children and grandchildren of decedent by a prior marriage. The matter was referred to the Register of Wills by the Court for examination and recommendations.

FIRST OBJECTION

Exceptant claims that \$916.65 paid by Administratrix c.t.a. for taxes on Florida property owned by decedent was improper. The question is now moot in view of the fact that the Administratrix c.t.a. has redeposited from her personal funds into the estate the sum of \$916.65. (From an academic standpoint however, although real estate taxes strictly speaking are not an estate debt, in this case the fiduciary paid the tax in order to save the property not only for her own benefit, but for the benefit of those parties who have filed the objections now before the Court.)

SECOND OBJECTION

Exceptant's claim that payment of attorney's fee in amount of \$1,000 was improperly made. Although the size of the estate (over \$600,000) certainly warrants an interim attorney's fee of \$1,000, the fee should not have been paid prior to Court approval thereon. However, the fee can now be ratified when the account is passed and approved by the Court.

THIRD OBJECTION

The exceptant claims that an asset of the estate has not been reported to the Court by the Administratrix c.t.a. The administratrix c.t.a. has consistently maintained that this asset was uncollectible. It is suggested that the Administratrix c.t.a. show the asset in her account as "desperate", and prove this fact to the satisfaction of the Register of Wills prior to the ultimate termination of this estate.

Memorandum to Judge Matthew F. McGuire

February 8, 1968

- Page 2 -

FOURTH OBJECTION

The exceptant seeks an advance distribution in favor of his clients prior to the final settlement of the estate. It is noted that an advance distribution of \$150,000 has already been paid. The federal estate tax return has been filed but has not been audited as yet. An additional tax assessment might possibly be levied against the estate, and it seems prudent to defer any such additional advance distribution until final clearance of the tax matters has been obtained. After that time, the exceptant would be in a position to file a petition for an advance distribution, and post an indemnifying bond in the amount of the advance distribution sought.

FIFTH OBJECTION

The exceptant's claim that the estate was improperly handled. An audit of the first account of the Administratrix c.t.a. by the Register of Wills found only routine errors, all of which were readily corrected by counsel for the Administratrix c.t.a.

SIXTH OBJECTION

The exceptant claims that the account is incomplete. In fact the account is complete and ready for submission to the Court for approval.

RECOMMENDATIONS

OBJECTION ONE	-	Overruled
OBJECTION TWO	-	Overruled
OBJECTION THREE	-	Administratrix c.t.a. should amend account to include the asset in question as "desperate".
OBJECTION FOURTH	-	Overruled
OBJECTION FIFTH	-	Overruled
OBJECTION SIXTH	-	Overruled

Pete J. McLaughlin
Register of Wills

CC - Robert A. Fields, Esq.
614 Indiana Ave., N. W.
Washington, D. C.

Lyle L. Robertson, Esq.
Southern Bldg.
Washington, D. C.

[Dated February 9, 1968]

MEMORANDUM TO THE CLERK

This matter came before the Court on Objections to the First Account filed by the widow and administratrix, c.t.a. of the above-captioned case. After hearing in open court the matter was referred to the Register of Wills, who, after hearing the parties, has made a report and recommendation to the effect that the exceptions be overruled. The Court has read the report and adopts it. It is succinct and to the point.

The exceptions to the account, therefore, are overruled. Order accordingly.

/s/ Matthew F. McGuire
United States District Judge

February 9, 1968

IN THE

United States District Court for the District of Columbia

HOLDING PROBATE COURT

ESTATE OF

ERNEST C. LEE

Deceased.

No. 117,279

Administration Docket 242

Date of death March 27, 1966

SECOND AND FINAL ACCOUNT OF Virginia Mae Lee, Administratrix, c. t. a.

PERIOD COVERED		ASSETS RECEIVED		DEBITMENTS
October 20, 1968				
Brought forward from first account:				
American Currency	15.50			
Jewelry	64.50			
100 sh. Tech. Serv. stock	162.50			
1653 sh. National Bank of Washington	152,076.00	615,801	77	
Deposit National Bank of Washington	463,483.27			
INCOME				
National Bank of Washington Dividends:				
11/21/67	13.88 (sale of stock right)			
1/68	922.00			
4/68	922.00			
7/68	922.00	4,623	88	
10/68	922.00			
Technical Service Dividends (from date of death to date of death)		12	00	
Received from sale of Technical Service stock per court order 8/31/67 (see broker's statement attached):				
Amount Received	850.00			
Appraised value	162.50			
Net Profit	687.50	687	50	
Refund to Estate from Internal Revenue Service (abatement of penalty 1966 Fiduciary Return)		134	27	
Received on Regis debt (not included in inventory because it was a desperate debt) Balance determined desperate.		4,000	00	
Interest received - National Bank of Washington time deposits				
Date	Amount	Term	Rate	Interest
1/30/68	125,000.00	60 day	4 1/2%	937.50
3/30/68	125,937.50	90 day	5%	1,574.22
6/30/68	127,511.72	90 day	5%	1,993.90
				4,105.62
Amounts carried forward,		629,365	04	

		Amounts carried forward.		04	00
DISBURSEMENTS		629,365			
Virginia Mae Lee - reimbursement for medical expenses (see sub vouchers filed)				820	18
Internal Revenue Service - Federal Estate Tax				142,494	58
D. C. Treasurer - D. C. Inheritance Tax (claimed under Item Six of will)				13,602	38
Florida State Comptroller Office (Florida Estate Tax)				162	57
Internal Revenue Service - penalty 1966 Fiduciary Return				134	27
Maryland Ancillary Proceedings:					
Maryland Inheritance Tax	95.00				
Appraisal fee	20.00				
Bond Premium	10.00				
Advertising	20.00				
Allen Handen, Esquire, Atty. fee	250.00				
Grace Hutchins - certified copies	4.50				
	<u>399.50</u>			399	50
James C. Toomey, Esquire - guardian ad litem fee (Court Order 9/13/67)				2,000	00
James C. Toomey, Esquire - reimbursement CPA fee (Court Order 9/13/67)				127	50
Robert A. Fields - reimbursement marshall fees and certified copies cost				23	96
Court costs				292	20
Don Beebe, CPA - bill for furnishing information IRS				35	00
Maynard T. Ryan, CPA - consultation fee				40	00
Joseph H. Robinsen, Inc. - bond premium 1967-68				528	00
Donald Sullivan, Esquire - claim for services rendered to estate by nominated successor executor prior to his renunciation of office.				977	50
Robert A. Fields - reimbursement for copying				14	00
Robert A. Fields - attorney fees (6%)				38,216	08
Virginia Mae Lee - Administratrix c. t. a. commission (3%) on adjusted total report of \$636,934.72				19,108	04
Final Court costs				176	05
		Brought forward.		629,365	04
				219,151	81
ASSETS RECEIVED					
DISBURSEMENTS					

Form No. 123

Balance to be Distributed	ASSETS RECEIVED		DISBURSEMENTS	
BROUGHT FORWARD,	629,365	04	219,151	81
Georgia Loretta Schwartz-bequest	5,000.00			
1/3 to Virginia Mae Lee, widow	135,071.08			
1/3 to Marion Lee Buchanan, daughter	135,071.08			
Less: proportionate share Est. Tax penalty	1,396.63			
	133,674.45		410,213	23
1/3 to children of J. William Lee, II, deceased son:				
J. William Lee, III	45,023.69			
Less: proportionate share Est. Tax penalty	465.55			
	44,558.14			
Donald H. Lee (reached his majority)				
)	45,023.69			
Less: proportionate share Est. Tax penalty	465.55			
	44,558.14			
Ruby Lee, Guardian Nancy G. Lee				
Mont. County, Md. Equity #31943	45,023.68			
Less: proportionate share Est. Tax penalty	465.66			
	44,558.02			
TOTALS,	629,365	04	629,365	04

District of Columbia, to wit:

We, the undersigned, Virginia Mae Lee ~~mark~~
 I, Administratrix, c. t. c.

of the estate of Ernest C. Lee
 late of the District of Columbia, deceased,
 do solemnly swear that the foregoing account is just and true, and that I have bona
 fide paid, or secured to be paid, the several sums for which I claim credit and
 allowances.

Sworn to and subscribed before me this 12 day of June, A. D. 1951

~~Registered with the District of Columbia~~
Notary Public, D.C. Clerk of the District Court

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT
 OF COLUMBIA
 Holding a Probate Court

On this _____ day of _____, A. D. 19____
 the foregoing account, being now presented for approval, the same is, after examination by the
 Court, approved and passed.

Judge.

"Every executor and administrator shall render to the Probate Court within the period of twelve months from the date of his letters the first account of his administration." D. C. Code (1961), Title 20—Sec. 601.

"If the first account shall not show the estate which was on hand to be fully administered, other accounts shall be rendered from time to time until the estate is fully administered under such rules as the United States District Court for the District of Columbia may establish." D. C. Code (1961), Title 20—Sec. 602.

"If an executor or administrator shall fail to return an account within the time limited by law or fixed by the rules of court, or within such further time as the Probate Court shall allow, his letters, on application of any person interested, may be revoked and administration granted at the discretion of the court." D. C. Code (1961), Title 20—Sec. 603.

1. Inventory of appraised personal estate with such adjustments as are necessary to show loss or gain upon any sales made under order of court.
2. Inventory of money and debts due the decedent.
3. Any personal property belonging to the estate received after the inventories were filed, including all income received on personal property of the estate.
4. Proceeds of any sale of real estate made pursuant to court order.
5. If an executor has authority under the will of his testator to collect rents from real estate, an itemized statement of such rents must be charged; otherwise neither an executor nor an administrator has any authority to collect rents.

1. Proper administration expenses, as provided by D. C. Code (1961), Sec. 20-605, including court costs, publications, commissions to the executor or administrator not exceeding 10 percent of the estate administered; attorneys' fees, and any extraordinary expenses which the court may think proper to allow. As a rule of practice, the total of commissions and fees is limited to 10 percent.

2. Those debts and claims granted priority of payment under D. C. Code (1961), Sec. 18-520, including funeral expenses to the extent approved by the Court; rent in arrear for which an attachment might be levied at law; and judgments against decedent of courts in the District of Columbia.

- No allowance will be made in the account for payments unless accompanied by vouchers, properly receipted.

When the above instructions have been complied with, your account should be filed in the Office of the Register of Wills, Washington, D. C., for examination, after which you will be notified as to additional requirements, if any.

[Filed _____, 1969]

**MOTION TO SURCHARGE VIRGINIA MAE LEE, ADMINISTRATRIX,
C.T.A. FOR LOSS IN VALUE OF NATIONAL BANK OF WASHINGTON
STOCK AND LOSS OF INTEREST**

and

EXCEPTIONS TO SECOND AND FINAL ACCOUNT

Marion Lee Buchanan, John W. Lee, III, Donald H. Lee and Ruby M. Lee, Mother, Custodian and Legal Guardian of Nancy G. Lee, minor daughter and grandchild, sole heirs at law of deceased, and with the exception of one specific legatee, represent the remaining two-thirds of the estate, the administratrix, having elected to take under the statute, for motion to surcharge Virginia Mae Lee, administratrix, c.t.a., for loss on National Bank of Washington stock and loss of interest, and for exceptions to the Second and Final Account of Virginia Mae Lee, administratrix, c.t.a., respectfully state to the court:

1. The court's attention is respectfully directed to the 1,653 shares National Bank of Washington stock carried in the account at value of \$152,076.00, the amount per share on First Account stated "app. 92". Administratrix reported this 1,653-3/4 shares stock on October 24, 1967, on Federal Inheritance Tax Return at alternate amount of \$136,434.38, or app. 82 per share. On October 24, 1967, the value of this stock had decreased 10 points or \$15,640.62 from the \$152,076.00 shown in the account. The stock quoted as of January 10, 1969, at 60 bid - 63 asked - or a decrease of 32 points is now down to \$99,180.00. \$152,076.00 less \$99,180.00 reveals a loss of \$52,896.00. The loss, after crediting dividends of \$4,623.88 in interest alone on this amount \$48,272.12 (\$52,896.00 less \$4,623.88) at 6% amounts to \$8,085.91. Your movants move that the court surcharge the administratrix for the shrinkage in value, and loss of interest in the amount of \$56,358.03 (\$48,272.12 plus \$8,085.91). See copy of letter dated January 15, 1969, from O'Connell and Joerg, Certified Public Accountants, attached.

2. Your movants, as appears in the file, objected to the sale of this stock as they wanted to take in kind, and strenuously endeavored to raise funds to meet the amount necessary to pay estate taxes. They were unsuccessful and the court approved sale of assets realizing therefrom \$455,916.67. This amount was three times the amount of the estimated estate taxes. The administratrix could have distributed the 1,653 shares of stock, and your movants could have exercised their individual judgment to keep or sell as they saw fit. The administratrix did not use diligence and care to prevent loss such as an ordinarily prudent person would do. In fact she did nothing, and although your movants made repeated demands for distribution of this stock and in view of the steady decline in value, it would be a gross miscarriage of justice to inflict upon your movants a loss of \$37,572.02 ($\frac{2}{3}$ of \$56,358.03). Common sense alone on the part of the administratrix would have compelled her to seek the advice of the court. There was, after the sale of assets at which funds amounting to \$455,916.67 were realized, no basis for withholding this stock from distribution, more so in a declining market.

3. The willful refusal of the administratrix to distribute the stock in the known falling market warrants the court in surcharging her for the loss of your movants. It is also pointed out that in the shrinkage of value of estate assets, the commission is based on the reduced value.

"A shrinkage in the value of estate assets for which the representative is not responsible is not a part of the total amount accounted for, and the representative's commission is based on the reduced value of the assets figured at the time of distribution.

Where a loss to the estate is due to the representative's default or neglect, the commission credits and the loss debit should be offset against each other." 31 Am. Jur. 2d 490, page 222.

4. By order of court on August 31, 1967, assets were ordered sold, from which \$455,916.67 was realized. Your movants, as before stated, unsuccessfully attempted to raise funds to purchase said assets up until time for appeal from the above court order, which was September 30, 1967. Due to your movants efforts to raise funds, the Inheritance Tax Returns were not timely filed. At the administratrix' insistence, and agreed to by your movants, the court directed that interest for late filing be at cost of your movants. Inheritance Tax Returns were not filed until October 24, 1967, as appears on the copy of the return.

5. From the due date for filing (June 27, 1967) until October 24, 1967, your movants are charged interest at 6% on \$142,494.58. Your movants move the court to charge the administratrix for loss of interest at 6% on \$455,916.67 from October 1, 1967 to October 20, 1967, when \$155,000.00 was distributed (\$150,000.00 plus a specific legacy of \$5,000.00), and on \$300,916.67 (\$455,916.67 less \$155,000.00) from October 20, 1967, to October 24, 1967, when estate taxes of \$156,096.96 were believed paid, and on \$144,819.71 (\$300,916.67 less \$156,096.96) to date, less \$4,105.62, the amount of interest shown as received on the administratrix' account. Your movants again invite the court's attention to the fact that the administratrix had almost three times the amount of cash necessary to pay estate taxes, yet after payment of taxes and distribution of \$155,000.00, has withheld \$144,819.71 cash, plus the bank stock. The account shows that from October 24, 1967, until January 30, 1968, a period of 119 days, only \$125,000.00 was placed where it would draw interest. For this period of time alone interest at 6% amounts to \$2,882.28 (approximately \$25.00 a day). For the period October 24, 1967, to January 27, 1969, interest at 6% on \$144,819.71 amounts to \$10,960.75, less \$4,105.62 as shown on the account, leaves a loss of interest amounting to \$6,855.13, two-thirds of which amounts to \$4,570.09 your movants must lose, and is unjust and unfair. As appears on the copy of letter of O'Connell and Joerg, Certified Public Accountants, attached, your movants are going to suffer loss of \$42,142.11 (2/3 of \$63,213.16).

6. The sale of assets approved by the court on August 31, 1967, included real estate, yet the administratrix did not follow U. S. District Court Rule 28 (d), 79 Stat. 719, as set forth in DCCE 20-1108.

7. The neglect on the part of the administratrix in her failure to exercise even ordinary prudence, as well as refusal to follow the law will cause irreparable injury to your movants unless the administratrix is surcharged the amount of loss as above outlined.

8. Your movants respectfully request that the court refer the matter to the auditor, to determine the exact amount of loss, as the dates of receipt of funds and the payment of estate taxes are taken from the date shown on the returns, and date of court action and are not necessarily the actual dates funds came into possession and control of the administratrix.

9. Your movants, as before stated, insist that no reason existed for withholding the bank stock, and respectfully move the court to direct the administratrix to distribute the bank stock forthwith. Thus enabling the auditor to determine the exact amount to be surcharged to the administratrix.

10. As to the \$4,000.00 item listed as received on the Regis debt, your movants invite the court's attention to the Memorandum of the Register of Wills, dated February 8, 1969, submitted by order of court (in the court's file) which stated in part:

"THIRD OBJECTION

The exceptant claims that an asset of the estate has not been reported to the Court by the Administratrix, c.t.a. The administratrix, c.t.a. has consistently maintained that this asset was uncollectible. It is suggested that the Administratrix, c.t.a. show the asset in her account as "desperate", and prove this fact to the satisfaction of the Register of Wills prior to the ultimate termination of this estate."

Your movants had repeatedly advised the attorney for the administratrix that this item be presented to the court for decision as to its worth. Your movants have been ignored until the above referenced memorandum of the Register of Wills. Although consistently maintained to the Register of Wills as desperate, \$4,000.00 was recovered. Your movants respectfully request that the court direct the auditor to make a full and complete report on this item.

EXCEPTIONS TO SECOND AND FINAL ACCOUNT

1. Your exceptants respectfully submit that the amount of \$19,108.04 claimed as commission by the administratrix is beyond reason. The administratrix absented herself from the jurisdiction for extended periods of time, and only once has she talked with one of your exceptants, and she has not consulted with your exceptants concerning the estate since letters were issued. Your exceptants have directed their attorney, Lyle L. Robertson, to arrange for a meeting with the administratrix, who reported that he made this request for a meeting to the attorney for the administratrix, Robert A. Fields, on two separate occasions and each such occasion this request was summarily rejected. As a result your exceptants have incurred expense and attorney fees (to which the size of the file in this case reflects), in an effort to effect an orderly administration and protect their interest. Most of which could have been avoided had the administratrix properly discharged her duties as a fiduciary.

2. The administratrix' careless disregard of her duties as a fiduciary manifest itself in no uncertain terms from the face of the Second and Final Account, in that,

FIRST The date letters were issued was October 20, 1966 – not 1968.

SECOND The statement in brackets following the item Technical Service Dividends (from date of death to date of death) is without sense.

THIRD The date of the last interest received on National Bank of Washington time deposits is 6/30/68. Although the account was signed December 12, 1968; was there no interest received since June 30, 1968, and if not, why not?

FOURTH The matter of the estate tax penalty. Had the administratrix so requested, extension of time to file would have been granted by Internal Revenue without penalty.

FIFTH The account states that the administratrix' commission is "on adjusted total report of \$636,934.72", the account itself totals \$629,365.04. This is not accounting, or even orderly presentation.

3. The shrinkage in value of the National Bank of Washington stock has been covered in the motion to surcharge, and there should not be a commission on a loss of \$52,896.00. However, it is to be pointed out that there were no debts, save taxes and administration expense, and no extra effort was required.

4. Your exceptants respectfully submit that the amount of \$38,216.08 claimed as attorney fee is unreal. Most of the legal services rendered the estate, such as preliminary investigation, the marshalling of assets, inventory, and petition for letters of administration were performed by Donald Sullivan, the nominated successor executor, prior to the time the attorney now claiming \$38,216.08 entered into the picture. Mr. Sullivan's claim for fee of \$977.50 is in sharp contrast.

5. The attorney and the administratrix have treated this estate as if it were their own personal property. Within 60 days after the administratrix qualified, without court order or advise of the court, disbursed estate funds for taxes and upkeep on Florida property which was not an administerable asset of this estate, and paid the attorney \$1,000.00 as a fee. This amount exceeded the amount claimed by Donald Sullivan, Esquire, who had performed most of the legal services, and has not yet been paid. The amount of the estate funds expended on the Florida property, and the advance attorney fee of \$1,000.00 was excepted to by your exceptants; however, the Register of Wills directed that the administratrix put back into the estate the amount of funds disbursed on the Florida property, prior to receipt of exceptions. This was discovered at the time the First Account was submitted. The \$1,000.00

paid to Mr. Fields was not put back into the estate, and it is significant that this amount is not credited against the amount of \$38,216.08 claimed. Your exceptants assert to the court that nothing was done unless it was a direct benefit to the administratrix and the attorney; and the interests of the estate received only secondary consideration.

6. Your exceptants further assert that they are apprehensive of serious individual tax problems as a consequence of the manner in which the sale of assets was handled. The contract of sale was not forthcoming until so ordered by the court, then hastily drawn, with little or no consideration of the tax consequences to the heirs.

7. And for such other and further reasons as will be presented at the time this motion and exceptions are heard.

It is therefore prayed that the court,

1. Direct the administratrix to distribute forthwith the 1,653 shares of National Bank of Washington stock.
2. Refer the account to the auditor to determine the exact amount of loss on the National Bank of Washington stock, the loss of interest to the estate due to withholding of the sum of \$144,819.71, a full and complete report on the Regis debt, and such other matters as the court may direct.
3. Grant such other and further relief as the premises demand.

/s/ Marion Lee Buchanan

/s/ John W. Lee, III

Donald H. Lee
Nancy G. Lee

By: /s/ Ruby M. Lee, Guardian and
Custodian for Nancy G. Lee,
minor.

[Jurat]

[Certificate of Service]

Movants and Exceptants

O'CONNELL AND JOERG
 CERTIFIED PUBLIC ACCOUNTANTS
 946 SLIGO AVENUE
 SILVER SPRING, MARYLAND 20910
 808-1166

JOSEPH D. O'CONNELL, C.P.A., MD.
 W. E. JOERG, C.P.A., MD.
 FRANCIS A. TETI, C.P.A., MD.

January 15, 1969

Mr. Lyle L. Robertson
 1425 H Street, N.W.
 Washington, D.C. 20005

Dear Mr. Robertson:

In accordance with your request, we have prepared computations as set forth below based upon data contained in second and final account of Virginia Mae Lee, administratrix, cta of the estate of Ernest C. Lee, and your records.

1653 shares National Bank of Washington (market 3-27-66)	\$152,076.00	
1653 shares National Bank of Washington (market 1-10-69)	99,180.00	\$ 52,896.00
Less: Dividends received on above		4,623.88
Net Asset Reduction		\$ 48,272.12
Int. on \$48,272.12 from 3-27-66 to 1-10-69 at 6%		\$ 8,085.91
Sales price of estate assets (8-31-67)	\$455,916.67	
Less: Distribution to heirs and one legatee	155,000.00	
Less: U.S. and D.C. estate taxes	\$300,916.67	
Int. on \$144,819.71 (10-24-67 to 1-27-69) at 6%	156,096.96	\$144,819.71
		\$ 10,960.75
Interest on stock loss	\$ 8,085.91	
Interest on net proceeds of sale of assets	10,960.75	
Less: Interest received as stated in account	\$ 19,046.66	
Total interest	4,105.62	
Add: Net asset reduction (above)	\$ 14,941.04	
	48,272.12	\$ 63,213.16

The fee of this office for services rendered in this matter is \$100.00.
 Should you have any questions, please do not hesitate to call.

Very truly yours,

O'CONNELL AND JOERG

W. E. Joerg
 W. E. Joerg

WEJ/blf

MEMORANDUM OF POINTS AND AUTHORITIES

NOTE:— Paragraphs refer to Motion to Surcharge Virginia Mae Lee, Administratrix, c.t.a., for Loss in Value of National Bank of Washington Stock and Loss of Interest.

1, 2, 3, 4 & 5. It was the duty of the administratrix to exercise the degree of care and diligence which an ordinarily prudent person would do in handling her own affairs. 31 Am. Jur. 2d, 236.

The administratrix was well aware of the decline in value of this bank stock. After receiving three times the sum required to pay taxes, she signed tax returns which reflected a loss in value of the stock, at that time of \$15,000.00. Yet she did nothing and continued to hold the stock until it has now decreased in value from the date of death of \$152,076.00 to \$99,180.00 for a loss of \$52,896.00, two-thirds of which, \$35,264.00, will be borne by your movants unless the court otherwise determines.

6 & 7. United States District Court Rule 43(c) reads:

“(c) MANNER OF PROCEEDING. All real estate, or any interest in land sold at public sale under order of Court shall be sold in the manner provided in Rule 28 of these Rules, and all real estate or any interest in land sold at private sale under order of the Court shall be sold in like manner as provided in paragraph (c) of said Rule.”

United States District Court Rule 28(d) reads:

“(d) ACCOUNT; DISTRIBUTION OF PROCEEDS. Promptly after the settlement of a private or public sale made under this rule a full and detailed account shall be filed and presented to the Court and the proceeds distributed as the Court may direct.”

The administratrix has not complied with this procedure. And as stated in paragraph 5 withheld \$144,819.71 surplus of the proceeds of the sale, after payment of estate taxes, specific legacy and a partial distribution. The sum of \$144,819.71 withheld to pay administration costs and adjustment in taxes was an unreasonably large amount, far in excess of what would normally be considered ample for this purpose. The administratrix having withheld this excessive amount thereby rendering it unproductive, is pure waste, and minus court approval or advise is too great a burden to be inflicted upon your movants.

D. C. Code, as reported in DCCE 20-1705(5) states:

"(5) the commissions of the executor or administrator, which shall be, at the discretion of the court, not under one per centum nor exceeding ten per centum on the amount of the inventories, *excluding what is lost or has perished; and*" (Underscoring added)

It is respectfully contended by your movants and exceptants that the loss of \$52,896.00 on the National Bank of Washington stock, and the loss of \$6,855.13 in interest on the unwarranted withholding of \$144,819.71 is waste.

D. C. Code, as stated in DCCE 20-1108 reads:

"Where the Probate Court is satisfied, upon a report of the auditor, that it is necessary to sell the real estate, or a part thereof, it shall authorize the executor or administrator to sell the property, or so much thereof as may be necessary for the payment of the debts or legacies, or both, on such terms as the court directs. *Any surplus of the proceeds of the sale, after payment of debts and legacies and costs of administration, is deemed real estate, and shall be distributed among the heirs or devisees as their interests may appear.*" (Underscoring added.)

The sum of \$144,819.71 after payment of taxes, debts and legacies was an unreasonable large sum to withhold in view of the clear mandate of the statute.

Respectfully submitted,

/s/ Lyle L. Robertson
Attorney for Movants and Expectants

AUTHORITIES

Law

DCCE 20-1108
 DCCE 20-1705(5)

Rules of Court

United States District Court Rule 28(d)
 United States District Court Rule 43(c)

Authorities

31 Am. Jur. 2d, 236
 31 Am. Jur. 2d, 490, page 222
 Memorandum, Register of Wills dated February 8, 1968.
 Letter O'Connell and Joerg, Certified Public Accountants,
 dated January 15, 1969.

/s/ Lyle L. Robertson
Attorney for Movants and Expectants

**OPPOSITION TO SURCHARGE VIRGINIA MAE LEE, ADMINIS-
TRIX, C.T.A., FOR LOSS IN VALUE OF NATIONAL BANK OF
WASHINGTON STOCK AND LOSS OF INTEREST**

and

OPPOSITION TO EXCEPTIONS TO SECOND AND FINAL ACCOUNT

Comes now Virginia Mae Lee, administratrix, c.t.a. of this estate, and respectfully states to this Honorable Court:

1. The value of a share of stock of National Bank of Washington for the various times during the administration of this estate is set forth below:

	<u>Per Share</u>	<u>Total</u>
As of date of death, 3/27/66, per court appraisal	\$92.00	152,076.00
As of date of qualification of administratrix, c.t.a., 10/24/66	84.00	138,852.00
As of date of petition to sell stock, 4/7/67	82.00	135,546.00
As of date of withdrawal of petition to sell stock, 8/31/67	82.00	135,546.00
As of date of Restated Second and Final Account, 2/1/69	61.50	113,406.00
(included in restated account is 191 shares received as a dividend)		

The above described stock dividend received by the estate did not represent income nor did it alter the estate value of the bank stock.

As a result of the objections filed by the movants the administratrix, c.t.a.'s petition to sell this stock and their stated desire to have the stock distributed to them in kind, the administratrix, c.t.a. has held this asset for distribution in kind at the time of final distribution of this estate. In the absence of a proper court order, she was not authorized to sell the stock, nor was she authorized to distribute the stock to the heirs of this estate.

2. The administratrix, c.t.a., as above stated, was under no duty to distribute this stock in the absence of a proper court order. And if she had distributed this stock without the authority of a court order, she might have subjected herself to a possible surcharge liability. Furthermore, had the movants desired such an advance distribution of the stock, they could have, at any time, filed a petition for such advance distribution.

3. There was no "wilful refusal" upon the part of the administratrix, c.t.a., for, as above stated, in the absence of a proper court order, there was no duty on her part to make advance distribution. In fact, pursuant to an agreement entered into in open court before Judge Holtzoff, she did make an advance distribution pro rata to the several heirs of the estate in the amount of \$150,000.00.

Furthermore, knowledge of a "falling market" cannot be imputed to the administratrix, c.t.a., particularly in view of the fact that the stock in question is a capital stock in a National Bank, the second largest bank in the Washington area.

4. The fifteen month period for filing Federal Estate Tax Return expired on June 27, 1967, and the original Federal Estate Tax Return was filed on June 12, 1967, within the time limitation. However, the then computed tax of \$148,798.49 was substantial and could not be paid at that time because the estate cash balance was approximately \$10,000.00. The above insolvency of the estate was the purpose of the petition to sell the bank stock, filed April 7, 1967, as above stated. Therefore, the Federal Estate Tax was, in fact, timely filed. The court order of August 31, 1967, authorizing and directing the sale of the funeral home business, reduced by \$28,000.00 the whole estate tax value of this asset, and an amended return was prepared and filed by the administratrix, c.t.a., on October 24, 1967, at which time a reduced Federal Estate Tax of \$142,494.58 was paid from the proceeds of the sale of the funeral home business and interest (not penalty) for late payment of \$2,793.27 was paid. The final audit of the Federal Estate Tax liability has just been

completed, resulting in an increase of the \$142,494.58 tax computed on the Amended Tax Return in the amount of \$474.91, which included interest from June 27, 1967, to the present.

5. As a result of the insolvency of the estate at the time the Federal Estate Tax was due and payable and administratrix, c.t.a.'s resulting inability to pay the above tax before October 24, 1967, she petitioned Internal Revenue Service for a ruling to reduce the ordinary six per cent interest per annum on a late tax payment to the preferential rate of four per cent, which request is still pending, and, if granted, will result in a tax saving of approximately \$900.00 which would be credited to the movants' account. At the time the above tax was paid, an advance pro rata distribution of \$150,000.00 was made to the several heirs of the estate. Further, in January, 1968, the principal remaining cash in the administration account was invested in time deposit certificates in the National Bank of Washington at a preferential interest rate as is more fully set forth in the final account.

6. As is apparent from the record herein relating to the sale of the funeral home by the administratrix, c.t.a., pursuant to the court order dated August 31, 1967, under the Uniform Partnership Laws of the District of Columbia, real estate directly used in the conduct of the partnership business is "equitably converted" to a chattel asset of the partnership business, and was so considered by Judge Hotlzoff in his ruling, after lengthy pleadings and argument on this particular issue on said date, August 31, 1967. For the above reason, U.S. District Court Rule 28(d) did not apply to this sale.

7. The allegations set forth in paragraph 7 of the motion filed herein are categorically denied and counsel maintains that the propriety of the administratrix, c.t.a. in her conduct and actions is adequately supported by the record herein and the laws of the District of Columbia.

8. It is respectfully submitted to this Honorable Court that the Register of Wills and the Clerk of Probate, with the assistance of his Accountant's Office, is capable and competent to review all questions raised by this motion

and exceptions filed herein and that office is, in fact, vested with these duties and authorized and empowered to perform these specific functions.

9. As above stated, in the absence of specific order of court authorizing "advance distribution" on an estate asset, there is no duty on the fiduciary to take action with respect thereto. It is noted that in view of the pending approval of the second and final account of the administratrix, c.t.a., that there should be at this time only a slight delay in the distribution of this stock in kind to the movants.

10. As to the \$4,000.00 asset described in income on the final account, this matter was raised and fully described to the Court in objections and answer thereto relating to the first account filed by administratrix, c.t.a. herein; and upon referral to the Office of The Register of Wills, a memorandum dated February 8, 1968, was submitted by the Register of Wills which contains the quotations set forth in the motion filed herein. A restatement of the relevant facts is as follows:

An examination of the estate assets made by the counsel for all parties interested in the funeral home business (as asset of this estate) in May, 1966, disclosed a series of promissory notes payable to the funeral home business dated from 1959 to 1962, totaling in excess of \$20,000.00, none of which had been paid by the debtor, Regis, the real estate broker and rent collection agent for the funeral home rental property. These notes represented deficiencies in the rent collection remittances due the funeral home by the broker over a period of three years. The then counsel for all interested parties, namely, Robert A. Fields, Jack Pinkston and Francis J. Ortman, mutually agreed to place the matter of the collection of these several notes in the hands of Francis J. Ortman, who represented the surviving partners of the funeral home partnership. Mr. Ortman first obtained a

currently executed promissory note for the sum of \$20,000.00 from the debtor. After repeated conferences with the debtor and his attorney, he recommended to the above counsel that in view of the total insolvency of the debtor and his apparent possibility of bankruptcy, that an offer made by the debtor and his wife to convey to Mr. Ortman as trustee for the funeral home interest four unimproved lots in Maryland which were subject then to government Condemnation for park purposes, having a value of \$2,000.00 each and a total value of \$8,000.00 be accepted. Mr. Fields and Mr. Robertson, after some lengthy discussions, agreed with Mr. Ortman and the lots were accepted from the debtor, Mr. Regis, the sale of which resulted in \$8,000.00 being received by Mr. Ortman, \$4,000 of which was forthwith transferred by him to the credit of this estate and distributed proportionately among the heirs. The remaining \$12,000.00 balance of the debt, in view of the foregoing, is considered desperate and uncollectible by both Mr. Francis J. Ortman and the counsel for this estate.

Both Mr. Fields, attorney for the administratrix, c.t.a., and Mr. Robertson and his predecessor, Mr. Pinkston, attorneys for the movants, were aware of the above situation with reference to the problems relating to the collection of this \$20,000.00 claim that was considered a partnership asset, and for that reason, Mr. Ortman, the attorney for the surviving partners, acted as above stated on behalf of the interest of this estate.

OPPOSITION TO EXCEPTIONS TO SECOND AND FINAL ACCOUNT

In consideration of added income received by the administratrix, c.t.a., since the date of the preparation of the second and final account in October, 1968, and in further consideration of adjustments made by Internal Revenue

Service on the Federal Estate Tax, a restated second and final account has been prepared and is being filed herewith.

In opposition to the exceptions to the second and final account filed herein, the administratrix, c.t.a. states to this Honorable Court as follows:

1. This estate has an administerable asset value of \$638,548.55 and no-administerable real estate having an appraised value of \$302,000.00, giving a total value of this estate in the amount of \$940,798.55. Your administratrix, c.t.a. has claimed a commission of \$19,108.03 as a just and reasonable compensation computed at the rate of three per cent on the value of the accountable assets of this estate as set forth in the second and final account and is the same as that reported in the Federal Estate Tax Return. In performing her duties, she has expended many days in cooperation with her counsel in preparing the various petitions, motions and other pleadings, as shown by the file herein. She has repeatedly attended court hearings relating to said pleadings. The preparation and filing of the District of Columbia and Federal fiduciary tax returns, and the Federal Estate Tax Returns also required a great deal of her time and personal attention. Also, in handling the Maryland ancillary proceedings, she was required to make two trips to Prince Frederick, the county seat of Calvert County. She made two trips to Florida in order to examine, care for, and obtain information concerning the Florida real estate for use in preparation of the Florida Inheritance Tax Return. And also, she expended much time in visiting the other non-administerable real estate in order to satisfy herself as to the taxable value and the estate interest in the real estate.

All parties have been represented by counsel from the inception of this estate, and as a result of certain misunderstandings arising at a conference among the parties herein on June 6, 1966, the administratrix, c.t.a. has relied upon her counsel to handle her duties in relation with the other heirs of this estate.

2. **FIRST:** This is obviously a typographical error and has been corrected on the restated second and final account.

SECOND: This, again, is a typographical error and has been corrected to read "from date of death to date of sale" on the restated second and final account.

THIRD: The interest earned on the 90 day note dated June 20, 1968, of \$1,593.90 was received and credited on September 30, 1968, at which time the note was again extended for principal and accumulated interest to mature December 30, 1968. The second and final account was prepared by the administratrix, c.t.a.'s execution in early October, 1968, and her execution was delayed pending consultations between counsel for the parties hereto, and was not, in fact, signed until December 12, 1968, at which time only the interest on this note on September 30, 1968, was credited as income on this account. Interest in the amount of \$1,613.83 was received on December 30, 1968, and the administratrix, c.t.a. has accounted for this additional income received subsequent to execution of the second and final account in her restated second and final account herein filed.

FOURTH: The Federal Estate Tax charge allocated movants was an interest charge for late payment, not a penalty for late filing. The return was, in fact, timely filed.

FIFTH: The computation of the administratrix, c.t.a.'s commission is based on the total asset value of the estate as shown in both the first and second final accounts and is properly computed thereon. It is noted that the commission and attorney fee claimed in the restated second and final account remains the same notwithstanding

an increase in the value of estate assets as reported in the restated account.

3. As the heirs have requested that the National Bank of Washington stock be distributed to them in kind, the administratrix, c.t.a. will at the proper time distribute the stocks to them in kind, as requested. The stock is therefore carried in the second and final account at the court appraiser's appraised value as of the date of death and not at its market value as of the date of administratrix, c.t.a.'s qualification, nor its valuation at the time of her petition and hearing thereon to sell the stock.

4. It is strongly maintained that the attorney fee claimed is both realistic and proper in view of the grave problems raised, both legal and tax-wise, the amount of legal pleadings and the research and court appearances required to properly handle this estate. It is noted that following the approval of the restated second and final account, two additional fiduciary returns, both local and federal, will have to be prepared and filed by counsel herein for the administratrix, c.t.a. Also, the final determination of the Florida and Maryland Inheritance Taxes will also require final settlement. It is noted that Donald Sullivan, the nominated successor executor, is claiming as attorney fee for services rendered to the estate only for his time expended in preliminary investigation prior to renouncing that office, and that he is not claiming a fee for services rendered in "marshalling the assets, inventory, and petition for letters of administration" Again, it is noted that this estate consists of assets valued at \$940,798.55, including administerable and non-administerable assets.

5. The exceptions raised in Paragraph 5, were, with minor exceptions, considered by the Register of Wills in his recommendations to the Court in the approval of the first account filed herein, which recommendations were accepted and confirmed by the Court, as is shown by the record. It is noted that the Register of Will *did not* direct the administratrix, c.t.a. to put back into the estate some \$900.00 claimed as reimbursement for expenses, principally

taxes, in maintaining the Florida property. This sum was voluntarily redeposited by the administratrix, c.t.a. in an attempt to "keep peace with her relatives." It is also noted that Mr. Sullivan's claimed fee cannot be paid until it is justified to the Court and it is understood that he will submit this justification in the immediate future, and, if passed by the Court, will be promptly paid. The \$1,000.00 advance attorney fee received by counsel herein will, of course, be credited against any fees allowed by this Court in the same manner that the pro rata advance distribution to the heirs of \$150,000.00 will be credited against the final distribution. It is further maintained that the conduct and actions taken by the administratrix, c.t.a. in handling the affairs of this estate have been correct, proper and timely, and at all times have represented proper and just conduct for the benefit of the estate.

6. The time for the exceptants to have raised this issue is long past. It should have been raised in their objections filed to the petition to sell this asset. The manner in which the sale of the interest in the funeral home business was handled was the subject of extensive pleadings and court hearings, as shown by the record, and after complete investigation by a guardian ad litem by the Court, who had the advice and assistance of a certified public accountant, this sale was consummated at the express direction of this Honorable Court and the tax consequence which flowed from the terms of the sale affected all the distributees of the estate equally.

In consideration of the foregoing, it is respectfully submitted that the Motion to Surcharge Virginia Mae Lee, Administratrix, c.t.a. for Loss in Value of National Bank of Washington Stock and Loss of Interest and Exceptions to Second and Final Account should be denied and dismissed.

/s/ Virginia Mae Lee

/s/ Robert A. Fields
Attorney for administratrix, c.t.a.
 614 Indiana Avenue, N.W.
 Washington, D.C.

[Jurat]

[Certificate of Service]

United States District Court for the District of Columbia

26

HOLDING PROBATE COURT

ESTATE OF

ERNEST C. LEE

Deceased.

Administration No. 117,279

Docket 242

Date of death March 27, 1966

Restated Second and Final ACCOUNT OF Virginia Mae Lee, Administratrix, c. t. a.

PERIOD BEGINNING		October 20, 1966		AMOUNT RECEIVED		DISBURSEMENTS	
Brought forward, first account:							
American Currency	15.50						
Jewelry	64.50						
100 sh. Tech. Serv. stock	162.50						
1653 sh. National Bank Washington	152,076.00						
Deposit National Bank Washington	463,483.27	615,801	77				
<u>INCOME</u>							
National Bank of Washington Dividends:							
11/67	13.88 (sale stock right)						
-1/68	922.00						
4/68	922.00						
7/68	922.00	4,623	88				
10/68	922.00						
1/69	922.00						
National Bank Washington stock dividend							
191 shares appraised at no value		00					
Technical Service Dividends (from date of death to date of sale)							
		12	00				
Received from sale of Technical Service stock per court order 8/31/67 (see broker's statement attached):							
Amount Received	850.00						
Appraised value	162.50						
Net Profit	687.50	687	50				
Refund received by Estate from Internal Revenue Service (abatement of penalty 1966 Fiduciary Return 134.27 plus \$8.50 interest)							
		142	77				
Received on Regis debt (not included in Inventory because it was a desperate debt). Balance determined desperate							
		4,000	00				
Interest received - National Bank of Washington time deposits:							
Date	Amount	Term	Rate	Interest			
1/30/68	125,000.00	60 day	4 1/2%	937.50			
3/30/68	125,937.50	90 day	5%	1,574.22	5,719	45	
6/30/68	127,511.72	90 day	5%	1,593.90			
9/30/68	129,105.62	90 day	5%	Amounts carried forward, 1,613.84	630,987	37	

		ASSETS RECEIVED		DISBURSEMENTS	
<i>Brought forward,</i>		630,987	37		
<u>DISBURSEMENTS</u>					
Virginia Mae Lee - reimbursement for medical expenses (see sub vouchers filed)				820	18
Internal Revenue Service - Federal Estate Tax				142,494	58
D. C. Treasurer - D. C. Inheritance Tax (claimed under Item Six of will)				13,602	38
Florida State Comptroller Office (Florida Estate Tax)				162	57
Internal Revenue Service - penalty 1966 Fiduciary Return				134	27
Maryland Ancillary Proceedings:					
Maryland Inheritance Tax		95.00			
Appraisal fee		20.00			
Bond premium		10.00			
Advertising		20.00			
Allen Handen, Esquire - Attorney fee		250.00			
Grace Hutchins - certified copies		4.50			
		399.50		399	50
James C. Toomey, Esquire - guardian ad litem fee (Court Order - 9/13/67)				2,000	00
James C. Toomey, Esquire - reimbursement CPA fee (Court Order - 9/13/67)				127	50
Robert A. Fields - reimbursement marshall fees and certified copies				23	96
Court Costs				292	20
Don Beebe, C. P. A. - bill for furnishing information IRS				35	00
Maynard T. Ryan, C. P. A. - consultation fee				40	00
Joseph H. Robinson, Inc. bond premium				594	00
Donald Sullivan, Esquire - claim for services rendered to estate by nominated successor executor prior to his renunciation of office.				977	50
Robert A. Fields - reimbursement for copying				14	00
Robert A. Fields - attorney fees (6%) (As claimed Fed. Est. Tax)				38,216	08
Virginia Mae Lee - Administratrix, c. t. a. commission (3%) on adjusted total report of \$636,934.72 (As claimed Federal Estate Tax)				19,108	04
<i>Amounts carried forward,</i>		630,987	37	219,041	76

		ASSETS RECEIVED		DISBURSEMENTS	
Brought forward.		630,987	37	219,041	76
DISBURSEMENT (cont)					
Final Court costs				176	05
Internal Revenue Service:					
Deficiency payment established on audit					
of Federal Estate Tax Return					
Interest on above 6/27/67 - 2/3/69		433.38		474	91
		41.53			
		630,987	37	219,696	72
Balance to be distributed				411,294	65
		630,987	37	630,987	37
Distribution					
Georgia Loretta Schwartz		5,000.00			
1/3 to Virginia Mae Lee, widow:					
American Currency		15.50			
Jewelry		64.50			
615 sh. NBW stock		56,580.00			
Cash		78,771.55			
Total Inh.		135,431.55	135,431.55		
1/3 Marion Lee Buchanan, daughter:					
614 sh. NBW stock		56,488.00			
Cash		78,943.55			
Total Inh.		135,431.55	135,431.55		
Less: prop. share Fed.					
Estate Tax interest		1,396.93			
Net Inh.		134,034.90			
1/9 J. W. Lee, III, grandson:					
205 sh. NBW stock		18,860.00			
Cash		26,283.85			
Total Inh.		45,143.85	45,143.85		
Less: prop. share Fed.					
Estate Tax interest		465.55			
Net Inh.		44,678.30			
1/9 D. H. Lee grandson:					
(reached majority 10/20/67)					
205 sh. NBW stock		18,860.00			
Cash		26,283.85			
Total Inh.		45,143.85	45,143.85		
Less: prop. share Fed.					
Estate tax interest		465.55			
Net Inh.		44,678.30			
1/9 Ruby Lee, Guardian Nancy G. Lee					
(Mnt. County, Md. Equity # 31943)					
205 sh. NBW stock		18,860.00			
Cash		26,283.85			
Total Inh.		45,143.85	45,143.85		
Less: prop. share Fed.					
Estate Tax interest		465.54			
Net Inh.		44,678.31			
Amounts carried forward.					

		ASSETS RECEIVED	DISBURSEMENTS	
Brought forward				
DISBURSEMENTS (cont)				
Final court costs			176	05
Internal Revenue Service:				
Deficiency payment established on audit of Federal Estate Tax Return	433.38		474	91
Interest on above 6/27/66-2/3/69	41.53	650,987 37	219,692	92
			411,294	65
Balance to be distributed		650,987 37	630,987	37
Distribution				
Georgia Loretta Schwartz	5,000.00			
1/3 Virginia Mae Lee, widow:				
American Currency	15.50			
Jewelry	64.50			
615 sh. NBW stock	50,719.49			
Cash	84,632.06			
Total Inh.	135,431.55			
	135,431.55			
1/3 Marion Lee Buchanan, daughter:				
614 sh. NBW stock	50,637.02			
Cash	84,794.53			
Total Inh.	135,431.55			
	135,431.55			
Less: prop. share Fed.				
Est. Tax interest	1,396.63			
Net Inh.	134,034.92			
1/9 J.W. Lee, III, grandson:				
205 sh. NBW stock	16,906.50			
Cash	28,237.35			
Total Inh.	45,143.85			
	45,143.85			
Less: prop. share Fed.				
Est Tax interest	465.55			
Net Inh.	44,678.30			
1/9 D. H. Lee, grandson reached majority 10/20/67				
205 sh. NBW stock	16,906.50			
Cash	28,237.35			
Total Inh.	45,143.85			
	45,143.85			
Less: prop. share Fed.				
Est. Tax interest	465.55			
Net In.	44,678.30			
1/9 Ruby Lee, Gdn Nancy G. Lee (Mont. County, Md. Equity 31943)				
205 sh. NBW stock	16,906.49			
Cash	28,237.36			
Total Inh.	45,143.85			
	45,143.85			
Less: prop. share Fed.				
Est. Tax interest	465.54			
Net Inh.	44,678.31			
Amounts carried forward.				

NOTE: The NBW stock is valued for the above distribution purposes at the revalued tax basis of \$82.47 per share

**SUPPLEMENT TO MOTION TO SURCHARGE VIRGINIA MAE LEE,
ADMINISTRATRIX, c.t.a., FOR LOSS IN VALUE OF NATIONAL
BANK OF WASHINGTON STOCK AND LOSS OF INTEREST
AND
EXCEPTION TO RESTATED SECOND AND FINAL ACCOUNT**

Marion Lee Buchanan, John W. Lee, III, Donald H. Lee and Ruby M. Lee, Mother, Custodian and Legal Guardian of Nancy G. Lee, minor daughter and grandchild, and sole heirs at law of deceased, and with the exception of one specific legatee, represent the remaining two-thirds of the estate, the administratrix having elected to take under the statute, for supplement to motion to surcharge Virginia Mae Lee, administratrix, c.t.a., for loss on National Bank of Washington stock and loss of interest, and for exceptions to the Restated Second and Final Account of Virginia Mae Lee, administratrix, c.t.a., respectfully state to the court:

1. The court's attention is invited to the fact that since the filing of their original motion to surcharge Virginia Mae Lee, administratrix, c.t.a., for the loss in value of National Bank of Washington stock and loss of interest, this stock has continued to decrease in value. As of February 18, 1969, the market - 57 bid 60 asked is a further decrease of 3 points for a total of 35 points. \$152,076.00 less \$94,221.00 reveals a loss of \$57,855.00. (In your movants original motion the loss was \$52,896.00.) The loss after crediting dividends of \$4623.88 in interest alone amounts to \$9257.85. (In your movants original motion the amount was \$8085.91.) Your movants move that the court surcharge the administratrix for the shrinkage in value, and loss of interest in the amount of \$62,488.97 (\$53,231.12 plus \$9,257.85). Copy of letter dated February 18, 1969, from O'Connell and Joerg, Certified Public Accountants, attached hereto and prayed read as a part hereof.

2. As stated in paragraph 2 of your movants original motion, the administratrix did nothing and still does nothing, with the result that your movants will suffer a loss of \$41,659.30 (2/3 of \$62,488.97). (In your movants original motion the amount was \$37,572.02.)

3. Your movants in their original motion moved that the court charge the administratrix for loss of interest at 6% (the rate charged by government for late filing of return) and repeats the amounts and periods set forth in paragraph 5 but less \$5,719.45, the amount of interest shown as received on the administratrix restated second and final account (the amount stated in movants original motion was \$4,105.62, the amount of interest shown as received on the administratrix account before restated).

4. The courts attention is directed to paragraph 5 of your movants original motion. For the period October 24, 1967, to February 18, 1969, interest at 6% on \$144,819.71 amounts to \$11,474.95, less \$5,719.45 as shown on Restated Second and Final Account leaves a loss of interest amounting to \$5,755.50, two-thirds of which amounts to \$3,837.00 your movants must lose, and is unjust and unfair. As appears on the copy of letter of O'Connell and Joerg, Certified Public Accountants, attached, your movants are going to suffer loss of \$45,496.30 (2/3 of \$68,244.47) (on your movants original motion the loss was \$42,142.11 (2/3 of \$63,213.16).

5. Your movants respectfully renew all other portions of their original motion not supplemented.

EXCEPTIONS TO RESTATED SECOND AND FINAL ACCOUNT

1. The courts attention is respectfully invited to the fact that the administratrix, c.t.a., since your exceptants filed their original exceptions has filed a Restated Second and Final Account, and since the filing of the Restated Second and Final Account, has filed a revised distribution schedule. Your exceptants point out that the necessity requiring the submission of a 'Restated Second and Final Account' and a 'Revised Distribution Schedule' evidences in no uncertain manner the merits of your exceptants position on the one hand, and on the other the incompent management of this estate.

2. The Maryland property was entirely ignored by the administratrix, c.t.a., and your exceptants were confronted with a notice published in the

paper in Calvert County that the property was two years delinquent in taxes, both County and City. Your exceptants went to Prince Frederick, Maryland, paid the taxes, and discovered that the tax bill had been sent for years to an address on G Street, N.W., between 13th & 14th, a building that was razed years ago. After having the address for mailing of tax statements changed to the address of one of your exceptants, went to the town of North Beach and found the same address that was in the County office, had it changed and paid the taxes. There were penalties on both County and Town. Several months later the administratrix, c.t.a., visited both County and Town offices and had address for sending statements changed to her address.

This action on the part of the administratrix, c.t.a., entirely rejects the statements in paragraph 1 of her opposition to exceptants to Second and Final Account. In fact it demonstrates nothing but caprice. The allowance by the court of the amount claimed as commission by her would be rewarding capriciousness. The further statement in this paragraph that she relied upon her counsel to handle her duties in relation to other heirs of the estate does not excuse the careless manner in which this estate has been handled, and to which your exceptants have just complaint. She has caused the estate to suffer severe financial loss, which your exceptants must necessarily share.

3. The careless disregard of her duties as a fiduciary again manifests itself on the face of the Restated Second and Final Account, in that no interest is shown as being received since September 30, 1968, on time deposits. Yet the administratrix states in her opposition to objections to second and final account that: "only the interest on this note on September 30, 1968, was credited as income on this account. Interest in the amount of \$1,613.83 was received on December 30, 1968, and the administratrix, c.t.a., has accounted for this additional income received subsequent to execution of the second and final account in her restated second and final account herein filed." The last entry on page one of the restated second and final account is September 30, 1968.

4. The administratrix in opposition to exceptions to second and final account, paragraph 3 states: "As the heirs have requested that the National Bank of Washington stock be distributed to them in kind, the administratrix, c.t.a. will at the proper time distribute the stocks to them in kind, as requested. The stock is therefore carried in the second and final account at the court appraiser's appraised value as of the date of death and not at its market value as of the date of administratrix, c.t.a.'s qualification, nor its valuation at the time of her petition and hearing thereon to sell the stock."

As appears in paragraph 2 of motion to surcharge Virginia Mae Lee, administratrix, c.t.a. for loss in value of National Bank of Washington stock and loss of interest, your exceptants were endeavoring to raise funds to meet estate taxes, and their interest in the National Bank of Washington stock was to be pledged as security for a loan. It was also to be pledged among other personal assets as security for a loan to purchase the funeral home. Their efforts to arrange finances for these purposes were unsuccessful. The sale of the funeral home produced \$455,916.67. Add the value of the National Bank of Washington stock, \$136,434.38 (at the time the Federal Inheritance tax return was filed - October 24, (1967) produces the total of \$592,351.05, an amount almost four times the sum needed to pay the estate taxes. It is apparent from the above quoted statement that there is but plain arbitrariness on the part of the administratrix, c.t.a., in regard to distributing this stock. The statements prepared by O'Connell and Joerg, attached to the original motion and dated January 15, 1969, and the one attached to the supplement to the original motion dated February 18, 1969, reflect a further loss of \$5,031.31 (\$68,244.47 less \$63,213.16). There has been a complete lack of judgment in retaining this stock, and the exercise of a minimal amount of common sense would have motivated her to seek the advise of the court. It is respectfully submitted that as she did nothing, her inactivity has unjustly inflicted severe financial loss upon your movants, through no fault of their own. Further, that your movants had the right to expect that the administratrix would exercise the degree of care that went with her office when she assumed the duties of her appointment.

In addition the courts attention is invited to the latter portion of the above quote, and the notation on the bottom of the revised distribution schedule which reads:

"NOTE: The NBW stock is valued for the above distribution purposes at the revalued tax basis of \$82.47 per share."

The matter of valuation for distribution purposes is not within the discretion of the administratrix, c.t.a. This could result in serious tax problems to your exceptants unless corrected by the court.

It is respectfully submitted that statements made by administratrix, c.t.a., in paragraph 6 of her opposition to motion to surcharge regarding U.S. District Court Rule 28(d) is Ipse Dixit. Further the transcript does not support the statement attributed to the learned Judge.

Your exceptants further point out to the court the fanciful approach to the matter of the Regis debt, and the agreement between counsel in regard thereto. The administratrix, c.t.a., and Mr. Fields enjoy their fantasy. Your exceptants apologize for burdening the court by the record; however, the following letter is brought to the attention of the court.

"August 20, 1968

Robert A. Fields, Esquire,
649 Indiana Avenue, N.W.,
Washington, D.C., 20004

Re: Estate of Ernest C. Lee,
deceased. Adm. No. 117,279

Dear Mr. Fields:

Pursuant to our telephone conversation of Friday regarding the receipt of payment for certain lots in Eastern Maryland from the United States Government.

Exceptions of my clients (paragraph 3) to the first account of the administratrix, c.t.a., filed January 30, 1968, invited the Court's attention to the omission of a debt of \$10,000. representing arrearages due decedent from rental properties. The Register of Wills, by order of court, submitted a memorandum dated February 8, 1968, which stated in pertinent part:

THIRD OBJECTION

The exceptant claims that an asset of the estate has not been reported to the Court by the Administratrix c.t.a. The administratrix c.t.a. has consistently maintained that this asset was uncollectible. It is suggested that the Administratrix c.t.a. show the asset in her account as "desperate", and prove this fact to the satisfaction of the Register of Wills prior to the ultimate termination of this estate.'

My clients have no alternative but to hold the administratrix to strict account in regard to the subject matter, and the administratrix and yourself are hereby so advised.

Yours very truly,

Lyle L. Robertson"

(Underscoring added)

Since the filing of their original motion and exceptions, your exceptants have received statement of services rendered by Donald M. Sullivan, Esquire, in support of his claim for a fee in the amount of \$977.50. His statement entirely supports your exceptants objection to the highly overstated fee claimed by Mr. Fields.

Your exceptants and their counsel yield to none in their respect for the ability of the personnel of the Office of the Register of Wills; however, submit that the amount of loss this estate has suffered should be determined after testimony under oath.

Your exceptants renew all other points not modified or corrected in the restated second and final account, and the revised distribution schedule, in their original motion and exceptions, including prayers.

[Jurat]

[Certificate of Service]

Marion Lee Buchanan, John W. Lee, III,
Donald H. Lee, Ruby M. Lee, Guardian
and Custodian for Nancy G. Lee, minor.
Movants and Exceptants

O'CONNELL AND JOERG
Certified Public Accountants
946 Sligo Avenue
Silver Spring, Maryland 20910

Joseph D. O'Connell, C.P.A., Md.
W. E. Joerg, C.P.A., Md.
Francis A. Teti, C.P.A., Md.

February 18, 1969

Mr. Lyle L. Robertson
1425 H Street, N.W.
Washington, D. C. 20005

Dear Mr. Robertson:

In accordance with your request, we have prepared computations as set forth below based upon data contained in restated second and final account of Virginia Mae Lee, administratrix, cta of the estate of Ernest C. Lee, and your records.

1653 shares National Bank of Washington (market 3-27-66)	\$152,076.00	
1653 shares National Bank of Washington (market 2-18-69)	<u>94,221.00</u>	\$ 57,855.00
<u>Less:</u> Dividends received on above		<u>4,623.88</u>
<u>Net Asset Reduction</u>		<u>\$ 53,231.12</u>
Int. on \$53,231.12 from 3-27-66 to 2-18-69 at 6%		<u>\$ 9,257.85</u>
 Sales price of estate assets (8-31-67)	 \$455,916.67	
<u>Less:</u> Distribution to heirs and one legatee	<u>155,000.00</u>	
	\$300,916.67	
<u>Less:</u> U.S. and D.C. estate taxes	<u>156,096.96</u>	<u>\$144,819.71</u>
Int. on \$144,819.71 (10-24-67 to 2-18-69) at 6%		<u>\$ 11,474.95</u>

Interest on stock loss	\$ 9,257.85	
Interest on net proceeds of sale of assets	<u>11,474.95</u>	
	\$ 20,732.80	
<u>Less:</u> Interest received as stated in account	<u>5,719.45</u>	
Total Interest	\$ 15,013.35	
<u>Add:</u> Net asset reduction (above)	<u>53,231.12</u>	<u>\$ 68,244.47</u>

The fee of this office for services rendered in this matter is \$100.00.
Should you have any questions, please do not hesitate to call.

Very truly yours,

O'CONNEL AND JOERG

/s/ W. E. Joerg

WEJ/vea

ORDER AUTHORIZING PARTIAL DISTRIBUTION

Upon consideration of the representations made in open court on February 25, 1969, by counsel for the administratrix, c.t.a. herein and the consent of counsel for all the other interested parties herein, as evidenced by his signature below, and of the circumstances shown to exist by the record herein, it is by the Court, this 4th day of March, 1969,

ORDERED:

That Virginia Mae Lee, administratrix, c.t.a. of the estate of Ernest C. Lee, deceased, be and she is hereby authorized and directed to distribute 1,844 shares of the capital stock of the National Bank of Washington, carried on the restated second and final account of the administratrix, c.t.a. at a value of \$152,076.00 in pro rata shares as follows:

615 shares to Virginia Mae Lee, widow
614 shares to Marion Lee Buchanan, daughter
205 shares to J. W. Lee, III, grandson

205 shares to Donald H. Lee, grandson

205 shares to Ruby Lee, Guardian of Nancy G. Lee, granddaughter,

provided, however, that the said distributees shall agree to return the said assets advanced to them under this order, or an equivalent, with interest, whenever so directed by the Court.

/s/ Oliver Gasch
Judge

Consent:

/s/ Lyle L. Robertson
Attorney for Marion Lee Buchanan, J. W. Lee, III.
Donald H. Lee, and Ruby M. Lee, Guardian for Nancy G. Lee.

ORDER

This matter came on for hearing on exceptant's motion to surcharge the Administratrix c.t.a. with the loss in value of National Bank of Washington stock incurred between the time said stock came into her possession and the present time, and upon consideration of the pleadings and the argument of counsel in open Court, and it appearing that the Administratrix sought permission to sell the stock in the interim but that objections were filed by exceptant as a result of which this Court's order permitting the sale of the stock was rescinded, and it further appearing that at least part of the alleged loss per share of the Bank stock in question is attributable to a stock division as a result of which additional shares were distributed to eligible stockholders, and it further appearing that a substantial tax question confronted the Administratrix which required, with the approval of the Court, sale of the business in question; and upon consideration of the exceptions taken to the Second and Final Account of the Administratrix, and upon argument thereon in open Court, it is by the Court this 4th day of March, 1969,

ORDERED, that the motion to surcharge the account of the Administratrix be and the same hereby is denied; and it is further

ORDERED that the exceptions to the Second and Final Account be and the same hereby are overruled.

/s/ Oliver Gasch
Judge

Robert A. Fields, Esquire
Attorney of Record
No. 117

Office of Register of Wills
Clerk of the Probate Court
Washington, D. C.

MAR 18 1969

No. 117,279

Estate of

Ernest C. Lee

Total Estate: Deceased.
\$638,548.49 (over)
Estate \$630,844.60 this a/c

Attorney's fee \$39,193.58 (over)

Underlying \$594.00 \$19,106.00

Commission 3% on \$638,548.49 =

Relationship of executor Widow
and administratrix a/c

Rule 48 applies. Complied with by
Affidavit of Notice filed.

Certificate of D. C. Finance
Officer filed and attached to
the account.

STATEMENTS OF SERVICES filed
and attached hereto.

Approval recommended,

Robert A. Fields
Register of Wills,

Restated Second & Final Account

Rule 48 applies to:

Marion Lee Buchanan
John W. Lee III
Donald H. Lee
Ruby Lee, Guardian of Nancy Lee,
Minor, legatee.

Total Estate

Assets:
First Account \$623,505.72
Addit'l 2d & final 15,042.77
\$638,548.49

This Account

Assets \$630,844.60
Less refund 242.77
\$630,601.83

Fees claimed as follows:

Donald Sullivan, Esq. services
rendered estate prior to re-
nunciation 3 977.50

Robert A. Fields, Esq.
Service rendered to
Administratrix, c.t.a. 38,216.08
39,193.58

Robert A. Fields, Esq. \$1000.00
claimed in First Account.

No commission claimed in first
account.

NOTICE OF APPEAL

Notice is hereby given this 28th day of March, 1969, that Marion Lee Buchanan, John W. Lee, III, Donald H. Lee and Ruby M. Lee, Mother, Custodian and Legal Guardian of Nancy G. Lee, minor, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 6th day of March, 1969, denying motion to surcharge Virginia Mae Lee, Administratrix, c.t.a., for loss in value of National Bank of Washington stock and loss of interest, and overruling exceptions to the Second and Final Account, and order of this court entered on 13th day of March, 1969, approving restated Second and Final Account of Virginia Mae Lee, Administratrix, c.t.a.

Lyle L. Robertson, *Attorney for*
Marion Lee Buchanan, John W. Lee, III,
Donald H. Lee, Ruby M. Lee, Legal
Guardian for Nancy G. Lee, minor

TRANSCRIPT OF PROCEEDINGS

March 28, 1969

- 1 The above-entitled cause came on for hearing, pursuant to notice, before the HONORABLE OLIVER GASCH, United States District Judge, at 2:20 p.m.

Appearances:

Lyle L. Robertson, Esq., appearing for John Lee, III; Donald Lee;

Robert A. Fields, Esq., appearing for American Casualty Company of Reading, Pennsylvania;

Also Present:

Ruby M. Lee, Legal Guardian for Nancy G. Lee, Minor.

- 2 THE COURT: Mr. Robertson, I think I will hear your matter first.
THE DEPUTY CLERK: In re: Estate of Ernest C. Lee, Administration No. 117, 279; Messrs. Fields and Robertson.

THE COURT: Mr. Robertson, before you get started, I entered two orders in this case when I was in civil. One of them is an order which is file-stamped March 4. Probably it was entered the same day in which I ordered your motion to surcharge the account of the Administratrix, and the same is hereby denied.

Is that what you want to have a stay on?

MR. ROBERTSON: That motion and the other part of that motion was overruling an exception at the same date, Your Honor, to refresh your memory—

THE COURT: I have another order, to accept the final account and the same is hereby overruled.

MR. ROBERTSON: That is what we desire to appeal from, Your Honor.

THE COURT: Now, the final order was signed by Judge Bryant, so it would be his order you would appeal from, not mine.

MR. ROBERTSON: That is a question that concerns me. I did have it confined to your order, Your Honor, and then on second thought, I combined an appeal from your order as well as from the order approving the final account. In the Office of the Register of Wills, your order is entered on the docket down there as an order, whereas the approval of the final account, and there is not entered in the same — in other words, not docketed as such. It is a technicality of some sort.

It is my understanding that under the rules, we have thirty days in which to appeal from Your Honor's order. It was signed by Your Honor on the 4th and entered on the docket on the 6th.

THE COURT: I hesitate to overrule the final account. That was Judge Bryant's order you would appeal from; that was approved. He approved and passed the final account. All I did was overrule your exceptions which does not — it is not in the same sense a final determination.

MR. ROBERTSON: Your Honor's ruling is not —

THE COURT: I just dealt that which was before the Register of Wills; that is to say, the exceptions that you had taken to the second and final account. I overruled those, but they had to get a further order from whatever judge was sitting in Probate, and that was Judge Bryant. He is sitting in

Probate this month. I went out of Probate the last of February. I really don't have jurisdiction over this case at this time: Judge Bryant would have, but if you don't get up to see him pretty soon, some other judge will be designated and you will have to deal with him.

MR. ROBERTSON: I object to Your Honor's ruling; I don't agree with
4 the Court. I think your order of March 4 is the final order.

THE COURT: It has been superseded by Judge Bryant's order. Judge Bryant takes one step further to completion, so it is Judge Bryant you should see about this matter. The other order I entered, I just want to make this clear, the other order I entered was one with your consent which was to distribute certain shares of stock. I assume you don't want anything on that?

MR. ROBERTSON: No, that is not — the main thing here we are appealing from is the order in which denied our motion to surcharge.

THE COURT: All right, sir.

MR. FIELDS: Thank you very much, Your Honor.

THE COURT: All right, thank you.

(Whereupon, at 2:25 p.m., the above-entitled cause was adjourned sine die.)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,008

In re ESTATE OF ERNEST C. LEE, Deceased

MARION LEE BUCHANAN,
JOHN W. LEE, III,
DONALD H. LEE,
RUBY M. LEE, LEGAL GUARDIAN FOR
NANCY G. LEE, Minor,

Appellants,

v.

VIRGINIA MAE LEE, Administratrix, c.t.a.,

Appellee.

United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR APPELLEE

FILED DEC 30 1969

Nathan J. Paulson
CLERK

Of Counsel:

JOHN J. SPRIGGS, JR.

614 Indiana Avenue, N.W.
Washington, D.C.

ROBERT A. FIELDS

614 Indiana Avenue, N.W.
Washington, D.C. 20004

Attorney for Appellee

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IN THE
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MARION LEE BUCHANAN,
JOHN W. LEE, III,
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RUBY M. LEE, LEGAL GUARDIAN FOR
NANCY G. LEE, Minor,

Appellants.

v.

VIRGINIA MAE LEE, Administratrix, c.t.a.,

Appellee.

BRIEF FOR APPELLEE

COUNTER STATEMENT OF ISSUES INVOLVED

1. Will an appeal lie from the trial court order denying a motion to surcharge administratrix, c. t. a. and overruling exceptions to second and final account of fiduciary by Judge Gasch dated March 4, 1969?

2. Was the trial court's passing and approval of the restated second and final account on March 13, 1969, an abuse of discretion or arbitrary and capricious?

3. If the Court should decide to review the propriety of Judge Gasch's March 4, 1969, order, were the following issues properly decided by him:

(a) Whether the administratrix, c. t. a. should be surcharged with:

- (1) Loss of value of bank stock
- (2) Loss of interest.

(b) Whether the sale of the estate interest in the partnership funeral home business was a sale of real estate.

(c) Whether there was a substantial estate tax problem.

(d) Whether the administratrix, c.t.a. properly carried out her duties as a fiduciary.

(e) Whether the administratrix, c. t. a.'s commission for services rendered to the estate was properly computed on the appraised value of the bank stock.

STATEMENT OF THE CASE

This is an appeal apparently from two separate and distinct rulings of the Probate Court of the United States District Court for the District of Columbia. The first is the appeal from a denial of a motion to surcharge the administratrix, c. t. a. and exceptions to the second and final account of the fiduciary by Judge Gasch's order dated March 4, 1969. (A. 86) and the second is an appeal from Judge Bryant's order of March 13, 1969, approving and passing the restated second and final account of the administratrix, c. t. a. (A. 109).

The decedent died testate on March 27, 1966, survived by the widowed wife of an 18 year marriage, the administratrix, c. t. a. and appellee herein, and the appellants, descendants of the deceased by a previous marriage, being the sole heirs at law of the estate. Not-

withstanding the provisions of the Will for a whole life estate for the surviving widow (A. 1) she, at the urging of the appellants, renounced and took against the Will a widow's share (A. 5); and following the renunciation of the surviving substitute nominated executor, (A. 12) she was appointed, over appellants objections, administratrix, c. t. a. of the estate on October 20, 1966 (A. 11).

The value of the estate as of the date of death, as shown by the restated inventory, the appraisal of personalty, and the accounts, was briefly as follows:

Cash and bonds	\$ 14,100.00
Estate interest in partnership funeral home business, J. William Lees Sons Co.	450,000.00
Stock	152,000.00
Misc. personalty	65.00

The above does not include an estate interest in non administrable real estate having an appraised value of \$302,000.00.

In view of the duty of the administratrix, c. t. a. to make provisions for the payment of an estimated \$155,000.00 gross federal estate tax due in June, 1967, the fiduciary was advised to petition the Court for authority to sell estate assets in order to have sufficient cash to pay this tax liability.

Thereafter, on April 7, 1967, she petitioned the court for authority to sell certian stock (A. 16) and the order authorizing and directing the sale of the stock was signed on that date (A. 17). Immediately thereupon, on April 10, 1967, appellants filed a petition to vacate the order to sell appraised personalty (A. 18) and on that same date the order vacating said above order for sale of stock was entered by Judge McGarraghy (App. 22).

On May 26, 1967, the administratrix, c. t. a. petitioned the Court for authority to sell the estate interest in the funeral home business at a price of \$450,000.00 (A. 28), representing the pre-

vious appraisal value of that asset. After opposition (A. 35), argument in court and consideration of the answer and report of the guardian ad litem (A. 48), an order authorizing sale of the estate interest in the funeral home business was entered on August 31, 1967 (A. 58). The sale of said interest was completed on September 13, 1967, at a price of \$455,916.67. In open court on the hearing of the above motion (A. 54, 57), an agreement was entered into by counsel for fiduciary and appellants and approved by the Court for an advance distribution of \$150,000.00 pro rata to the heirs of the estate, which distribution was made on October 30, 1967, and the federal estate tax liability in the amount of \$156,000.00 was discharged, and the remainder of approximately \$125,000.00, after payment of certain other expenses, was invested in a time deposit certificate for the benefit of the estate, and liquidated at time of distribution.

The filing of the final account and the resulting final distribution of the estate was held in abeyance pending the field audit and approval of the Federal Estate Tax by Internal Revenue Service and immediately upon the completion of that tax audit, the second and final account was filed (A. 82), and, after exceptions to the account and a motion to surcharge the administratrix, c. t. a. filed by appellants herein (A. 86), the administratrix, c. t. a.'s opposition thereto (A. 97) and her restated second and final account* (A. 106), a full hearing was held on these issues before Judge Gasch on February 25, 1969. Judge Gasch drew and filed an order denying the motion to surcharge and overruling exceptions to the final account on March 4, 1969 (A. 119). On March 28, 1969, counsel for appellants herein attempted to file an appeal of that order and the Court stated that his order of March 4, 1969, was not a "final determination" and ruled that his order was not appealable for that reason (A. 121, 123).

*Note: A. 108 is not in the record and should be replaced with A. 110.

Thereafter, final distribution was made, pursuant to the final account, on March 31, 1969.

ARGUMENT

I.

An Appeal Should Not Lie From the March 4, 1969, Order Denying Motion To Surcharge Administratrix, c.t.a., and Overruling Exceptions to Second and Final Account.

It is a well recognized principal that an appeal cannot be taken from an interlocutory order (*Metzger v. Kelley*, 34 App. D.C. 548), or from a judgment or decree not final as to all the parties, the whole subject matter and all the causes of action involved, . . . and that if the judgment or decree be not thus final and complete, the writ of error or appeal must be dismissed for want of jurisdiction.¹

As Judge Gasch's order of March 4, 1969, (A. 119) only related to a minor aspect of the subject matter of this administration and was not final as to the cause of action involved herein, it is maintained that the appeal from his order should be dismissed for want of jurisdiction. It is further noted that there was no application for rehearing or reconsideration made to this order by appellants herein. It is well settled law that a decision is not final within the meaning of the statute providing for an appeal until disposition of an application for rehearing or reconsideration seasonably made and entertained.² Until that time the judgment or decree does not take final effect for the purpose of the writ of error or appeal.³

¹Southland Industries Inc. v. Federal Communications Commission, 69 App. D.C. 82.

²U.S. ex rel Dascomb v. Board of Tax Appeals, 56 App. D.C. 392.

³Op. cit. note 1.

The provisions of Title 28, Sec. 1291, U.S. Code states: "The courts of appeals shall have jurisdiction of appeal from all final decisions of the district courts of the United States . . ." The cases indicate that the words "final decision" used therein is a judgment that puts an end to the suit, deciding all the points and litigation.⁴ Certainty in finality of adjudication is a necessity, as jurisdiction of the United States Courts of Appeals is strictly limited by statute.⁵

The record indicates that this motion was commenced by the appellants' filing a lengthy motion, the appellee filing an opposition to that motion and an extensive hearing in open court before Judge Gasch; that Judge Gasch took the matter under consideration and prepared and filed the March 4, 1969, order. Thereafter on March 28, 1969, Judge Gasch ruled that this order was not appealable (A. 121, 123).

For the above reasons counsel maintains that the Court should not take jurisdiction of the appeal from this particular order.

II.

The Trial Court (Judge Bryant) Did Not Abuse His Discretion Nor Act in an Arbitrary or Capricious Manner in Passing and Approving the Final Estate Account on March 13, 1969.

Following the filing and docketing of the March 4, 1969, order, referred to above, the account having been fully audited by the auditors of the Office of the Register of Wills, the Register of Wills thoroughly examined the file and recommended the passing and approval of the final account in the ordinary course of business (A.

⁴Gillespie v. Schram, 108 F.2d 39 (1939).

⁵Ohio Cas. Ins. Co. v. Mahan, 350 F.2d 54 (1965).

120). Judge Bryant, then sitting in Probate, on March 13, 1969, on the above recommendation of the Register of Wills, passed and approved the account. The Judge, therefore, acted in a reasonable and proper manner in this respect.

An action is "arbitrary, unreasonable and capricious when based on no sound basis of reason and a will to rule without due regard to facts."⁶

There is no evidence or any indication that the trial court acted in an improper, arbitrary, unreasonable or capricious manner in passing and approving the final account, and in the absence of such further showing, the appeal from this order should be denied.

III(2)

The Administratrix, c.t.a., Should Not Be Charged With Loss of Value of Bank Stock or Loss of Interest on That Loss of Value

The matters considered below were fully pleaded and argued in the trial court and the appellee's opposition to motion to surcharge Virginia Mae Lee, administratrix, c.t.a. for loss in value of National Bank of Washington stock and loss of interest and opposition to exceptions to second and final account (A. 97) contains the principal basis of the argument set forth below.

One of the principal assets of this estate was a large block of the capital stock of the National Bank of Washington, which has the following chronological values:

⁶Application of Haim, 88 NYS 2d 840, 842, 195 Misc. 612.

	Per Share	Total
As of date of death, 3/27/66, per court appraisal	\$ 92.00	\$152,076.00
As of date of qualification of administratrix, c.t.a., 10/24/67	84.00	138,852.00
As of date of petition to sell stock, 4/7/67	82.00	138,546.00
As of date of withdrawal of petition to sell, 8/31/67	82.00	138,546.00
As of date of Restated Second and Final Account, 2/1/69	61.50	113,406.00
(Included in restated account is 191 shares received as a stock dividend on 12/15/67.)		

As indicated above, the value of the stock was \$135,546.00 as of April 7, 1967, the date the trial court granted appellee's petition to sell the Bank Stock (A. 17). Immediately thereafter, on April 10, 1967, the appellants filed a petition to vacate the order to sell the bank stock (A. 18) and the order vacating the order to sell bank stock was signed on the same date (A. 22). It is noted that the appellants' motion to vacate contained a request that the stock be distributed in kind and not be sold. In view of the appellants' request for distribution in kind, as stated above, the administratrix, c.t.a. distributed the stock in kind at the final distribution of the estate. In this, she followed the recommendation of the Register of Wills in his February 8, 1968, memorandum to Judge McGuire (A. 79) contained in the fourth objection thereof.

The difference in the value of the stock from April 7, 1967, to the time of distribution cannot be charged to the administratrix, c.t.a. in view of the request of appellants for distribution in kind and her previous effort to sell it at an earlier date in the administration. Furthermore, the appellants could have petitioned the court for advance distribution of this stock at any time, as the fiduciary makes advance distribution at her personal risk unless authorized by

the court to make such distribution.⁷ It follows that if she should not be surcharged for the value of the loss of market value of the stock, neither should she be surcharged with the loss of interest on the loss of market value of that asset.

The loss of asset value was caused by a decline in the market value of the stock and knowledge of a "falling market" cannot be imputed to the administratrix, c.t.a., especially in view of the fact that the stock in question is the capital stock of the second largest bank in the Washington area.

III(b)

There Was, in Law, No Estate Real Estate Sold by the Fiduciary in This Case

By order dated August 31, 1967, the administratrix, c.t.a. was authorized to sell the estate asset consisting of the estate interest in the J. William Lees Sons Company, trading as Lee Funeral Home. A part of the assets of that partnership was the real estate used by the partnership in the conduct of its business. By the provisions of the Uniform Partnership Act of the District of Columbia, Title 41, Sec. 307, real estate directly used in the conduct of the partnership business is "equitably converted" to a chattel asset of the partnership business and was so considered by Judge Holtzoff in his ruling, after lengthy pleadings and argument. The Columbia Title Company, which settled the sale of the partnership interest in the funeral home guaranteed the title on the transfer of the real estate on this basis of "equitable conversion."

A well known text on partnership⁸ states the following:

⁷Barrett v. MacDonald, 264 Minn. 560, 121 NW 2d 165.

⁸Rowley on Partnership, 2d Ed. p. 340

"Subject to rules of Section 10(UPA) . . . a partnership now holds real estate under the same conditions as to tenure and disposition as it does personal property." (*Windom Bank v. Klein*, 191 Minn. 447, 254 N.W. 602.)

For the above reasons the U.S. District Court Rule 28(d) and Title 20, Sec. 1108 of the D.C. Code did not apply to the proceeds of this sale. It is noted however, that a pro rata distribution of \$150,000.00 was made with the consent of all parties and approved by the court from the proceeds of this sale.

III(c)

The Estate Did Have a Very Substantial Estate Tax Problem

The gross Federal Estate tax paid by the fiduciary in this estate was \$157,090.74, which included the District of Columbia Inheritance Tax, but not the Maryland or Florida Inheritance Taxes. This obligation on the part of the fiduciary was the reason for her several petitions to sell various estate assets in order to raise cash to meet this liability, as the only cash available to her was approximately \$14,000.00.

The fiduciary filed a timely Federal Estate Tax return on June 12, 1967, the gross estate tax then being computed to be \$163,096.69, and in view of no funds being available to pay the tax, asked for an extension of time to pay the tax on the basis of financial hardship. On October 24, 1967, immediately following the receipt of the proceeds of the sale of the interest in the partnership funeral home business, an amended return was filed reducing the gross estate tax to \$156,080.97. On February 10, 1969, the final audit was completed (A. 125-126) which slightly increased the tax due to a total of \$157,090.74. However, through an apparent error on the part of Internal Revenue Service, the estate had been previously assessed a

total of \$291,203.07, representing an erroneous over-assessment of \$147,814.13, which assessment was not abated by Internal Revenue Service until February 10, 1969, and was contained in that Internal Revenue Service Audit. During the course of the negotiations by the administratrix, c.t.a. and counsel with the Internal Revenue Service auditors, there appeared to counsel the possibility of an increased assessment by reason of increased valuation being placed on certain assets of the estate.

Certainly an alleged additional tax liability of approximately \$147,000.00 in an estate of this size is a "substantial tax problem" and not merely an "exercise in mathematics".

III(d)

The Administratrix, c.t.a., in All Respects Properly Carried Out Her Duties as a Fiduciary

As shown by the whole record herein, notwithstanding repeated motions and petitions filed by the appellants herein and repeated court hearings, in no respect has the trial court given any indication of any impropriety on the part of the administratrix, c.t.a., in her fiduciary conduct. The extensive record speaks for itself.

III(e)

The Administratrix, c. t. a's Commission for Services Rendered to Estate Was Properly Computed Upon the Appraised Value of The National Bank of Washington Stock as of the Date of Death.

It is clear that the value of appraised property distributed in kind to the heirs is valued for the purpose of distribution at the court ap-

praised value and, therefore, this appraised value is the basis for the computation of the fiduciary's commission.⁹

The allowance of this commission was within the sound discretion of the Court which only acted after a proper recommendation by the Register of Wills (A. 120).

CONCLUSION

This Court should not take jurisdiction over the trial court's order of March 4, 1969, denying motion to surcharge and overruling exceptions, as that order was not a final order entitling this Court to jurisdiction.

In the absence of a clear showing of the trial court's abuse of discretion or arbitrary and capricious ruling in passing and approving the final account of the administratrix, c. t. a. on March 13, 1969, the appeal from that order should be dismissed.

Should this Honorable Court decide that the property of Judge Gasche's Ruling of March 4, 1969 should be reviewed, it is maintained that his ruling is amply supported by both the facts and the law.

ROBERT A. FIELDS
614 Indiana Ave., N.W.
Washington, D.C. 20004
Attorney for Appellee

⁹D.C. Code, Title 20 Sec. 1705(5), 1967. Mersh, Probate Court Practice, 391 et seq.

SUPPLEMENTAL APPENDIX

Address any reply to: 31 Hopkins Plaza, Baltimore, Md. 21201

US Treasury Department

District Director

Internal Revenue Service

Date:

In reply refer to:

May 12, 1969



▷ Mrs. Virginia Mae Lee, Administratrix c.t.a.
c/o Mr. Robert A. Fields
614 Indiana Avenue, N.W.
Washington, D.C. 20004

Dear Mrs. Lee:

Estate of: Ernest C. Lee
Date of Death: March 27, 1966

There is enclosed for your information and files a copy of a report covering an examination of the return of the above-named estate. You have indicated your agreement to the adjustment of the tax liability shown in the report.

In the case of a deficiency, you will be presented at an early date with a bill for payment of the net deficiency in tax, together with interest, provided the full amount due has not already been paid.

In the case of an overassessment, it will be processed and you will receive a check in payment of the overassessment and interest, provided there are no outstanding taxes against which the amount should be credited.

This is not a final closing letter disclosing the Federal estate tax liability of this estate. The estate tax closing letter will be mailed after the estate tax return, Form 706, has been finally reviewed and approved, and after all administrative action has been completed.

Very truly yours,

Irving Machiz
Irving Machiz
District Director

Enclosure:
Copy of Report

FORM 3231A
(REV. JULY 1964)

PRELIMINARY STATEMENT

☒ ESTATE
TAX☐ GIFT
TAXPAGE 1 OF 7

ESTATE OF DECEASED

ERNEST C. LEE

DATE OF DEATH OR GIFT TAX YEAR(S)

3/27/66

STATEMENT OF TAX LIABILITY

DATE OF DEATH OR GIFT TAX YEAR(S)	TAX PREVIOUSLY ASSESSED	CORRECT TAX LIABILITY	OVERASSESSMENT	DEFICIENCY	PENALTIES - INCREASE OR (DECREASE)
<u>3/27/66</u>	<u>\$91,203.07</u>	<u>\$13,388.94</u>	<u>\$178,814.13</u>	\$	\$
TOTAL	<u>\$91,203.07</u>	<u>\$13,388.94</u>	<u>\$178,814.13</u>	\$	\$
NET DEFICIENCY (Overassessment)		AGREEMENT SECURED		NAME OF PERSON WITH WHOM FINDINGS DISCUSSED	
<u>\$ 147,814.13</u>		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<u>Robert A. Field's</u>	

PRINCIPAL CAUSES OF CHANGES, AND OTHER INFORMATION

- 1) Abating overassessment due to two accounts being
credited on the same estate
- 2) Misc. changes resulting in above overassessment.

TABLE OF CONTENTS:

Schedule I
Schedule I A + B
Schedule II

EXAMINER

James F. Duckie III

FILING DISTRICT

Baltimore Md.

DATE

2/10/69

p. 2517

FORM 1272
(REV. JAN. 1964)U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE
LINE ADJUSTMENT - ESTATE TAXSCHEDULE
I

ESTATE OF

E. VIRGIL C. LEE

DATE OF DEATH

3/27/66

ITEM	AS SHOWN ON RETURN (a)	ADDITIONS TO VALUE OF ESTATE (b)	DEDUCTIONS FROM VALUE OF ESTATE (c)	AS CORRECTED (d)
A REAL ESTATE	297,150.00	2,000.00		299,250.00
B STOCKS AND BONDS	143,133.32			143,133.32
C MORTGAGES, NOTES, AND CASH	5,381.96			5,381.96
D INSURANCE	6,000.00	712.58		6,712.58
E JOINTLY OWNED PROPERTY	21,700.00			21,700.00
F OTHER MISCELLANEOUS PROPERTY	423,064.50			423,064.50
G TRANSFERS DURING DECEDENT'S LIFE				
H POWERS OF APPOINTMENT				
I ANNUITIES				
TOTAL GROSS ESTATE	896,529.78	2,712.58		899,242.36
J 1. Funeral expenses and expenses incurred in administering property subject to claims	63,967.52	4,762.67	4,881.92	64,086.77
K 2. Debts of decedent				
K 3. Mortgages and liens				
4. TOTAL (Items 1 through 3)	63,967.52			64,086.77
5. Allowable amount of above deductions				
L 6. Net losses during administration				
L 7. Expenses incurred in administering property not subject to claims				
8. TOTAL (Items 5 through 7)	63,967.52			64,086.77
M 9. Bequests, etc., to surviving spouse	242,902.59	291.96		242,610.63
10. Adjusted gross estate				
11. Net amount deductible for bequests etc., to surviving spouse (Item 9 or 1/2 of Item 10, whichever is smaller)				
N 12. Charitable, public, and similar gifts and bequests				
TOTAL ALLOWABLE DEDUCTIONS, except exemption (Totals of lines 8, 11, and 12)	306,870.11	5,054.63	4,581.92	306,697.70
EXEMPTION	60,000.00			60,000.00
TOTAL DEDUCTIONS	366,870.11			366,697.70
TAXABLE ESTATE	529,659.67	7,767.21	4,581.92	532,544.96

FORM 3230
(TRANSLUCENT)
OCTOBER 1961

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

EXPLANATION OF ADJUSTMENTS

PAGE 3 OF 7

ESTATE OF/DECEASED

DATE OF DEATH OR DATE
TAX YEAR

SCHEDULE

ERNEST C. LEE

3/27/66

I A

EXPLANATION OF ADJUSTMENTS TO THE TAXABLE ESTATE
Schedule A - Real Estate

Returned Corrected

Item 4

10,000.00 12,000.00

2,000.00

Value of Real Estate

12,000.00 12,000.00

Adjusted to reflect market value

Schedule D - Insurance

Item 1

1,000.00 1,712.58

712.58

Adjustment made pursuant to
Section 2042 of the Internal
Revenue Code

1,712.58 1,712.58

Schedule J - Expenses

Item B-1

17,147.40 19,108.04

1,960.64

19,108.04 19,108.04

To allow maximum administrative
fee allowed & claimed

FORM 3230
(TRANSLUCENT)
OCTOBER 1961

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

EXPLANATION OF ADJUSTMENTS

PAGE 4 OF 7

ESTATE OF/DONOR

DATE OF DEATH OR GIFT
TAX YEAR

SCHEDULE

ERNEST C. LEE

3/27/66

IA

Explanation of Changes To The Taxable Estate

Schedule I - Continued

Returned Corrected

Item B-2

\$34,294.50 \$37,216.08

2,921.25

To allow maximum ATTORNEY FEE

37,216.08 37,216.08

Agreed upon, less \$1000 deducted

From income on Fiduciary Tax Return.

Item B-3: Misc. Expenses

Sub items I + J

15,254.41 - 0

237.26 - 0 -

Disallow improper deductions

- 0 - - 0 -

Sub items B

1,500.00 - 0 -

D

1,500.00 - 0 -

To disallow expenses deducted

(3,000.00)

From income per Fiduciary Tax Return

- 0 - - 0 -

Schedule M - Minor Deduction

\$242,902.59 \$242,610.63

(291.96)

242,610.63 242,610.63

For computation for above

adjustment - see numbered pages 5 & 6 of This Report.

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE		PAGE 5 OF 7
FORM 3230 (TRANSLUCENT) OCTOBER 1961	EXPLANATION OF ADJUSTMENTS	
ESTATE OF/DONOR	DATE OF DEATH OR GIFT TAX YEAR	SCHEDULE
ERNEST C. LEE	3/27/66	I B
Explanation of changes to the marital Deduction		
1) Gross assets per amended Return		\$896,529.78
Plus: additions to schedules A & D		2,712.58
Corrected Gross Assets		899,242.36
Less: ALL debts & charges		64,086.77
		831,155.59
Less: Non Probate property passing to wife		28,412.58
Residue		\$802,743.01
1/3 share of Estate - To wife		267,581.00
Plus: Non Probate property		28,412.58
		295,993.58
State death Taxes paid by wife		5,386.64
Marital Deduction before Fed. Est. Taxes		\$240,406.94
2) Assumed Taxable Estate		\$500,000.00
Net Tax Thereon		\$133,300.00
1/3 For widows share		\$44,433.33
3) Corrected gross assets		\$899,242.36
Less: corrected expenses		64,086.77
Trial Marital Deduction		\$290,406.94
Less: Fed. Est. Tax		44,433.33
		245,973.61
Specific Exemption		60,000.00
		370,000.24
Trial Taxable Est.		\$529,181.98
Assumed Taxable Est.		500,000.00
Discrepancy		\$29,181.98

FORM 3230
(TRANSLUCENT)
OCTOBER 1961

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

EXPLANATION OF ADJUSTMENTS

PAGE 6 OF 7

ESTATE OF/DONOR

DATE OF DEATH OR GIFT
TAX YEAR

SCHEDULE

• ERNEST C. LEE

3/27/66

I B

4) Corrective Factor: $1 - \left(\frac{.31}{3} \right) = .896667$

5) Adjusting The discrepancy:

Assumed Taxable Estate

\$500,000.00

Adjustment $\left(\frac{29,181.98}{.896667} \right)$

32,544.96

Corrected Taxable Estate

\$532,544.96

Net Tax Thereon

\$143,388.74

1/3 OF Above

\$47,796.31

6) Marital Deduction before Fed. Est. Tax

\$290,406.74

Less: Spouse's share of Fed. Est. Tax

47,796.31

Correct Marital Deduction

\$242,610.63

7) Corrected gross assets

\$899,242.36

Less: Debt & Expenses

\$64,086.77

Marital Deduction

242,610.63

Specific Exemption

60,000.00

366,697.40

Corrected Taxable Estate

\$532,544.96

Tax Thereon

\$143,388.54

FORM 1273

(REV. FEB. 1966)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

COMPUTATION OF ESTATE TAX

DATE OF DEATH

ESTATE OF

ERNEST C. LEE

3/27/66

PART I

ITEM	AS SHOWN ON RETURN	AS CORRECTED
1. GROSS ESTATE TAX	\$ 156,080.97	\$ 157,090.74
2. CREDIT FOR STATE DEATH TAXES	13,586.39	13,701.50
3. GROSS ESTATE TAX LESS CREDIT FOR STATE DEATH TAXES (Item 1 minus item 2)	\$ 142,494.58	\$ 143,388.94

PART II

4. CREDIT FOR FEDERAL GIFT TAXES	\$	\$
5. CREDIT FOR TAX ON PRIOR TRANSFERS		
6. CREDIT FOR FOREIGN DEATH TAXES		
7. TOTAL OF CREDITS UNDER PART II (Sum of items 4, 5, and 6)		
8. NET ESTATE TAX PAYABLE (Item 3 minus item 7)	\$ 142,494.58	143,388.94
9. ESTATE TAX PREVIOUSLY ASSESSED		① 291,203.07
10. <input type="checkbox"/> DEFICIENCY <input checked="" type="checkbox"/> OVERASSESSMENT		\$ 147,814.13
11. PENALTIES, IF ANY		\$

REMARKS:

x per amended return
 ① Result of assessment granted for both original & amended returns.

A. 133

Address any reply to: 31 Hopkins Plaza, Baltimore, Md. 21201

US Treasury Department

District Director

Internal Revenue Service

Date:

AUG 7 1969

In reply refer to:

24:0



D
Mrs. Virginia Mae Lee, Administratrix c.t.a.
c/o Mr. Robert A. Fields
614 Indiana Avenue, N. W.
Washington, D. C. 20004

Dear Mrs. Lee:

Estate of: Ernest C. Lee
Date of Death: March 27, 1966

ESTATE TAX CLOSING LETTER

The Federal estate tax liability for the estate named above is as follows:

Gross estate tax \$ 157,090.74

Less credits allowed:

State death taxes..... \$ 13,701.80

Federal Gift Tax \$ -

Tax on prior transfers..... \$ -

Foreign death taxes..... \$ -

LESS TOTAL CREDITS..... \$ 13,701.80

NET ESTATE TAX..... \$ 143,388.94

If proof of settlement of the Federal estate tax liability is required by a third party, this closing letter, together with cancelled check(s) or receipt(s) showing payment of the net estate tax shown above, and interest and penalties (if any), may be exhibited to such third party as evidence that the Federal estate tax liability has been discharged for the above named estate.

Very truly yours,

District Director

THIS IS AN IMPORTANT DOCUMENT

FORM L-154 (REV. 8-66)

No. 23,008

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

IN RE:

ESTATE OF ERNEST C. LEE,
deceased

MARION LEE BUCHANAN,
JOHN W. LEE, III,
DONALD H. LEE,
RUBY M. LEE, LEGAL GUARDIAN FOR
NANCY G. LEE, Minor,
Appellants,

v.

VIRGINIA MAE LEE,
Appellee.

On Appeal From
The United States District Court

**REPLY BRIEF
FOR APPELLANTS**

United States Court of Appeals
for the District of Columbia Circuit

FILED NOV 14 1969

Nathan J. Paulson
CLERK

LYLE L. ROBERTSON
406 Southern Building
Washington, D.C. 20005
Attorney for Appellants

(i)

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,008

IN RE:

ESTATE OF ERNEST C. LEE,
deceased

MARION LEE BUCHANAN,
JOHN W. LEE, III,
DONALD H. LEE,
RUBY M. LEE, LEGAL GUARDIAN FOR
NANCY G. LEE, Minor,
Appellants.

v.

VIRGINIA MAE LEE,
Appellee.

On Appeal From
The United States District Court

REPLY BRIEF
FOR APPELLANTS

For reply to brief of the administratrix, c.t.a. (c.t.a. will hereinafter be omitted), appellee; appellants Mrs. Marion Lee Buchanan, John W. Lee, III,

Donald H. Lee, adults, and Ruby M. Lee, Legal Guardian for Nancy G. Lee, minor, hereinafter referred to as movants or exceptants, respectfully state:

ERROR IN APPELLE'S STATEMENT OF CASE

The administratrix statement on page 4 of her statement of the case:

"In open court on the hearing of the above motion (Rec. Tr. No. 44, pp. 29-31), an agreement was entered into by counsel for fiduciary and appellants and approved by the Court for an advance distribution of \$150,000.00 pro rata to the heirs of the estate, * * *

Appellants - movants and exceptants - entered into no agreement as stated. The order of the court (A. 58) contains no provision for distribution.

The last sentence at bottom of this same page is in error, in that counsel for appellants appeared before Judge Gasch on March 28, 1969, intending to institute a stay of proceedings, but as the transcript (A. 122) indicates the court referred counsel to Judge Bryant. After conferring with Judge Bryant, who called Mr. McLaughlin to his chambers where discussion of stay of proceedings was had, and upon the opinion of Mr. McLaughlin concurred in by Judge Bryant that the stay of proceedings was not necessary, as the bond of the administratrix would cover the amount in the motion to surcharge, if the appeal was successful. Notice of appeal was then filed.

Appellants' Reply to Argument I and II

The statements contained therein are not relevant in that to hold that the order of March 4, 1969, denying motion to surcharge and overruling exceptions to the second and final account is not a final decree, would deny the heirs with two-thirds interest in the estate the right to be heard. Especially in view of the many changes made in the second and final account after its initial filing, without allowing time to be heard prior to its routine approval by the

court. The administratrix sets up her own set of facts which are not consistent with the facts or the record in this case, then destroys them. In so doing presents matters not germane.

Appellants' Reply to Argument III(a)

The administratrix states the value of the bank stock as of the date of the Restated Second and Final Account 2/1/69 to be \$61.50 per share, total \$113,406.00. The bank stock was transferred on the bank records to the heirs on March 13, 1969, and received from the administratrix on March 17, 1969. It was not distributed 'at the final distribution of the estate', as the administratrix states on page 8 of her brief. It was distributed as a result of a court order signed March 4, 1969 (A. 118) to which counsel for movants and exceptants consented.

In *Barrett v. MacDonald* (1963), 264 Minn. 560, 121 N.W.2d 165 cited by the administratrix, the court said on page 571 (Minnesota Reports):

A number of courts have considered the related problem of assigning values to securities for tax purposes or for distribution in kind.⁹ It is the general rule that under such circumstances the value of assets shall be determined as of the time of actual physical transfer. There are sound reasons for following this procedure. Until such time as a legatee receives custody of the property to be assigned, he is at the mercy of the vagaries and fluctuations of the market. In the ordinary course of administration the representative is the one who determines the time for distribution, subject only to the ordinary and extraordinary problems which may arise in connection with protracted litigation or the assessing of state and Federal taxes. It would be grossly unjust to adopt a rule fixing an arbitrary date for assigning values if the prospective assignee cannot from that time forward exercise his own judgment and control over the liquidation and reinvestment of his assets to hedge against the possibility of losses if the market declines. Conversely, it would be unfair in the case at bar to fix values as of the time of the entry of the decree or the final account when thereafter a rising market distorts the

percentages or proportions of the estate to which the legatees are entitled. In order to avoid inequities in situations of this kind, we hold that the value of assets to be distributed in kind shall be determined as of the date of transfer. Translated into the facts of the instant case, it will therefore be necessary to deduct from Mrs. Barrett's share of her mother's estate the number of shares of stock in Minnesota Mining or in other issues, the market value of which will equal \$103,111.10 as of the date of actual transfer to Mrs. Barrett.

⁹ Hart v. Burke (3 Cir.) 108 F. (2d) 82; King v. Citizens & Southern Nat. Bank (Fla. App.) 119 So. (2d) 67; In re James' Estate, 65 N. Y. S. (2d) 756; In re Simpson, 32 N. J. Super. 85, 107 A.(2d) 827.

As to the recommendation of the Register of Wills in his February 6 (should be 8), 1968 Memorandum to Judge Matthew F. McGuire (A-79), Memorandum to the Clerk (A-81), The letter from Lyle L. Robertson to Register of Wills of February 8, 1968 (A-76); The Order of February 7, 1968 (A-74), The Memorandum to Judge McGuire from the Register of Wills dated February 8, 1968 (A-75), and the letter from Robert A. Fields of October 24, 1967 to Lyle L. Robertson (A-59) speak for themselves. It must be noted however, that the recommendation of the Register of Wills (A-79) states Marion Lee Buchanan to be the administratrix. Mrs. Buchanan is one of the movants and exceptants. Further the memorandum to the clerk (A-74) directs that first account be referred to the Office of the Register of Wills for examination and report. Also memorandum of the Register of Wills says that no hearing was held (A-75). In addition the order overruling objection to the first account (A-81) indicates that a hearing was held.

Movants and exceptants respectfully submit that the statement in the last paragraph of Argument 111(a) is a non-sequitur.

Appellants Reply to Argument 111(b)

The Court's attention is invited to District of Columbia Code, Title 20, Section 1108 (1966 edition):

**§20-1108. SALE OF REAL ESTATE TO SATISFY DEBTS
AND LEGACIES.**

"Where the Probate Court is satisfied, upon a report of the auditor, that it is necessary to sell the real estate, or a part thereof, it shall authorize the executor or administrator to sell the property, or so much thereof as may be necessary for the payment of the debts or legacies, or both, or such terms as the court directs. Any surplus of the proceeds of the sale, after payment of debts and legacies and costs of administration, is deemed real estate, and shall be distributed among the heirs or devisees as their interests may appear." (Underscoring added)

Movants and exceptants submit that the provisions of the above Code are clear and are not subordinated to the Uniform Partnership Act of the District of Columbia. Furthermore, there is nothing in the court's order of August 31, 1967 (A-58) that supports the statement that the 'real estate directly used in the conduct of the partnership business is "equitably converted" to a chattel asset of the partnership business and was so considered' by the learned Judge in his ruling.

As to the basis upon which the title company guaranteed the transfer of the real estate, their action could only be based upon the court order.

Appellants' Reply to Argument III(c)

It is respectfully submitted that only a casual examination of the Inventory of Appraisal of Personal estate (A-14) reveals that the preparation of the tax returns was little more than routine. The statement that an apparent error on the part of Internal Revenue Service, representing an over-assessment of \$147,000.00 does not warrant a "substantial tax problem".

Appellants' Reply to Arguments III(d) and III(e)

The administratrix had in her possession funds in excess of amount shown on the restated second and final account for distribution. In addition a cash dividend was declared on the bank stock to all holders of record as of March 10, 1969; in all amounting to more than one thousand dollars. At the time this brief is written, six months after order to distribute stock was issued and approval of the restated second and final account, these funds have not yet been distributed. There is no reason why this additional sum still remains in the hands of the administratrix. This is but further evidence of neglect by the fiduciary of her duties and with which your movants and exceptants have had to endure, and pray that this Honorable Court will correct.

Respectfully submitted

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